

**PAPERWORK REDUCTION ACT SUPPORTING STATEMENT**

**APPLICATIONS BY SECURITY-BASED SWAP DEALERS OR  
MAJOR SECURITY-BASED SWAP PARTICIPANTS FOR STATUTORILY  
DISQUALIFIED ASSOCIATED PERSONS TO EFFECT OR BE  
INVOLVED IN EFFECTING SECURITY-BASED SWAPS**

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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 Entity”). Exchange Act Section 15F(b)(6), as added by Section 764(a) of the Dodd-Frank Act, makes it unlawful for an SBS Entity to permit an associated person who is subject to a statutory disqualification 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, “[e]xcept to the extent otherwise specifically provided by rule, regulation, or order of the Commission.”<sup>1</sup>

On August 5, 2015, the Commission proposed Rule of Practice 194 which would provide a process for an SBS Entity to make an application to the Commission for an order permitting an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity.<sup>2</sup> The proposal would specify the process for obtaining relief from the statutory prohibition in Exchange Act Section 15F(b)(6), including by setting forth the required showing, the form of application and the items to be addressed with respect to associated persons that are natural persons and that are not natural persons.

In particular, proposed Rule of Practice 194 would provide as follows:

- Proposed paragraph (a) of the rule would define the scope of the rule. The proposed rule would allow an SBS Entity to voluntarily submit an application to the Commission to request an order where an associated person of an SBS Entity is subject to a statutory disqualification and thereby prohibited from effecting or being involved in

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<sup>1</sup> Exchange Act Section 15F(b)(6) provides: “Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise or reasonable care should have known, of the statutory disqualification.” 15 U.S.C. 78o-10(b)(6).

<sup>2</sup> See *Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons to Effect or be Involved in Effecting Security-Based Swaps*, Exchange Act Release No. 75612 (Aug. 5, 2013), 80 Fed. Reg. 51683 (Aug. 25, 2015).

effecting security based swaps on behalf of the SBS Entity under Exchange Act Section 15F(b)(6).<sup>3</sup>

- Proposed paragraph (b) sets forth the required showing for an application. For the Commission to issue an order granting relief under proposed Rule of Practice 194, the Commission would need to find that it would be consistent with the public interest to permit the associated person of the SBS Entity who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity.
- Proposed paragraphs (c) and (e) specify the form of the application for natural persons and entities (respectively). Proposed paragraphs (c) and (e) would require that each application with respect to an associated person subject to a statutory disqualification shall be supported by a written statement, signed by a knowledgeable person authorized by the SBS Entity.
- Proposed paragraphs (d) and (f) set forth the items to be addressed for applications with respect to natural persons and entities (respectively). Each of the items in proposed paragraphs (d) and (f) would be addressed in the written statement required by proposed paragraphs (c) and (e).
- Proposed paragraph (g) would require an applicant to provide as part of the application any order, notice or other applicable document reflecting the grant, denial or other disposition (including any dispositions on appeal) of any prior application concerning the associated person under the proposed rule and other similar processes.
- Proposed paragraph (h) governs the procedure where there is an adverse recommendation proposed by the staff with respect to an application. Proposed paragraph (h) would provide that where there is such an adverse recommendation, the applicant shall be so advised and provided with a written statement by the staff of the reasons for such recommendation.
- Proposed paragraph (i) would provide for temporary relief from the statutory prohibition in Exchange Act Section 15F(b)(6) with respect to associated persons that are not natural persons and that are subject to a statutory disqualification.
- Proposed paragraph (j) would limit the applicability of the prohibition in Exchange Act Section 15F(b)(6) by prescribing the conditions under which an SBS Entity may permit a person associated with it that is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf without being required to file an application under Rule of Practice 194. Generally, proposed paragraph (j) would permit associated persons that are subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of SBS Entities where the Commission or other regulatory authority previously reviewed the matter and permitted the person subject to a statutory disqualification to be a member, associated

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<sup>3</sup> 15 U.S.C. 78o-10(b)(6).

with a member, registered or listed as a principal of a regulated entity notwithstanding statutory disqualification.

*Application*

To make an application under proposed Rule of Practice 194, the SBS Entity filing an application with respect to an associated person that is a natural person would provide to the Commission:

- Exhibits required by proposed paragraph (c) to Rule of Practice 194, including a copy of the order or other applicable document that resulted in the associated person being subject to a statutory disqualification; an undertaking by the applicant to notify promptly the Commission in writing if any information submitted in support of the application becomes materially false or misleading while the application is pending; a copy of the questionnaire or application for employment specified in Rule 15Fb6-2(b), with respect to the associated person; in cases where the associated person has been subject of any proceedings resulting in the imposition of disciplinary sanctions during the five years preceding the filing of the application or is the subject of a pending proceeding by the Commission, Commodity Futures Trading Commission (“CFTC”), any federal or state regulatory or law enforcement agency, registered futures association, foreign financial regulatory authority, registered national securities association, or any other self-regulatory organization (“SRO”),<sup>4</sup> or commodities exchange or any court, a copy of the related order, decision, or document issued by the court, agency or SRO.
- A written statement that includes the information specified in proposed paragraphs (d) and (g) to Rule of Practice 194, including, but not limited to: the associated person’s compliance with any order resulting in statutory disqualification; the capacity or position in which the person subject to a statutory disqualification proposes to be associated with the SBS Entity; the terms and conditions of employment and supervision to be exercised over such associated person and, where applicable, by such associated person; the compliance and disciplinary history, during the five years preceding the filing of the application, of the SBS Entity; information concerning prior applications or processes.

To make an application under proposed Rule of Practice 194, the SBS Entity filing an application with respect to an associated person that is not a natural person would provide to the Commission:

- Exhibits required by proposed paragraph (e) to Rule of Practice 194, including a copy of the order or other applicable document that resulted in the associated person being subject to a statutory disqualification; an undertaking by the applicant to notify promptly the Commission in writing if any information submitted in support of the application becomes materially false or misleading while the application is pending; organizational charts of the associated person (if available); certain applicable policies

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<sup>4</sup> “Self-regulatory organization” is defined in Section 3(a)(26) of the Exchange Act (15 U.S.C. 78c(a)(26)) as “any national securities exchange, registered securities association, or registered clearing agency, or (solely for the purposes of sections 19(b), 19(c) and 23(b) of [the Exchange Act]) the Municipal Securities Rulemaking Board established by section 15B of [the Exchange Act].”

and procedures of the associated person; a copy of an order, decision, or document issued by the court, agency or SRO issued during the five years preceding the filing of the application; in cases where the associated person has been subject of any proceedings resulting in the imposition of disciplinary sanctions during the five years preceding the filing of the application or is the subject of a pending proceeding by the Commission, CFTC, any federal or state regulatory or law enforcement agency, registered futures association, foreign financial regulatory authority, registered national securities association, or any other SRO, or commodities exchange or any court, a copy of the related order, decision, or document issued by the court, agency or SRO; the names of any natural persons employed by the associated person that are subject to a statutory disqualification and that would effect or be involved in effecting security-based swaps on behalf of the SBS Entity.

- A written statement that includes the information specified in proposed paragraphs (f) and (g) to Rule of Practice 194, including, but not limited to: general background information about the associated person; the associated person's compliance with any order resulting in statutory disqualification; the capacity or position in which the person subject to a statutory disqualification proposes to be associated with the SBS Entity; the compliance and disciplinary history, during the five years preceding the filing of the application, of the SBS Entity; information concerning prior applications or processes.
- To be eligible for the temporary exclusion set forth in paragraph (i)(1)(ii) and (i)(1)(iii) to proposed Rule of Practice 194, under proposed paragraph (i)(2), the SBS Entity would be required to file with the application a notice setting forth the name of the SBS Entity and the name of the associated person that is subject to a statutory disqualification, and attaching as an exhibit to the notice a copy of the order or other applicable document that resulted in the associated person being subject to a statutory disqualification.

Under paragraph (h) to proposed Rule of Practice 194, an applicant could submit a written statement in response to any adverse recommendation proposed by Commission staff with respect to an application under proposed Rule of Practice 194.

The information sought in connection with proposed Rule of Practice 194 would assist the Commission in determining whether allowing associated persons to effect or be involved in effecting security-based swaps on behalf of a SBS Entity, notwithstanding statutory disqualification, is consistent with the public interest.

*Notice*

An SBS Entity would not be required to file an application under proposed Rule of Practice 194 with respect to certain associated persons that are subject to a statutory disqualification, as provided for in proposed paragraph (j) of proposed Rule of Practice 194. To meet those requirements, however, the SBS Entity would be required to file a notice with the Commission.

For associated persons that are natural persons, the notice in proposed paragraph (j)(2)(iii) would set forth: (1) the name of the SBS Entity; (2) the name of the associated person

subject to a statutory disqualification; (3) the name of the associated person's prospective supervisor(s) at the SBS Entity; (4) the place of employment for the associated person subject to a statutory disqualification; and (5) identification of any SRO or agency that has indicated its agreement with the terms and conditions of the proposed association, registration or listing as a principal.

For associated persons that are not natural persons, the notice in proposed paragraph (j)(2)(iv) would set forth: (1) the name of the SBS Entity; (2) the name of the person associated that is subject to a statutory disqualification and that will effect or be involved in effecting security-based swaps on behalf of the SBS Entity; and (3) identification of any SRO or agency that has indicated its agreement with the terms and conditions of the proposed association, registration or listing as a principal.

Information collected in connection with the notices provided by Rule of Practice 194(j)(2)(iii) and (j)(2)(iv) would assist the Commission for examination purposes by identifying associated persons that are subject to a statutory disqualification (and other basic information).

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

Application

Information collected in connection with an application under proposed Rule of Practice 194 would assist the Commission in determining whether an associated person of an SBS Entity should be permitted to effect or be involved in effecting security-based swaps on behalf of the SBS Entity, notwithstanding that the associated person is subject to a statutory disqualification. Although, absent the proposed rule, an SBS Entity could nonetheless submit an application for an exemptive order directly under Exchange Act Section 15F(b)(6),<sup>5</sup> proposed Rule of Practice 194 would specify the information the Commission needs to evaluate such an application, and under what standard the Commission will consider whether to grant such relief.

Notice

Information collected in connection with the notices provided by Rule of Practice 194(j)(2)(iii) and (j)(2)(iv) would assist the Commission for examination purposes by identifying associated persons that are subject to a statutory disqualification (and other basic information).

3. **Consideration Given to Information Technology**

Proposed Rule of Practice 194 would utilize established procedures under the Commission's current Rules of Practice,<sup>6</sup> including Rules of Practice 151, 152 and 153.<sup>7</sup> Rule of Practice 151 allows filings with the Commission to be made by facsimile if a contemporaneous transmission of a non-facsimile original with manual signature is made.

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<sup>5</sup> 15 U.S.C. 78o-10(b)(6).

<sup>6</sup> 17 CFR 201.100 *et seq.*

<sup>7</sup> 17 CFR 201.151, 201.152, 201.153.

4. **Duplication**

Proposed Rule of Practice 194 does not establish a duplicative process because SBS Entities are not presently required to register and are not presently subject to the statutory prohibition in Exchange Act Section 15F(b)(6).<sup>8</sup> If adopted, proposed Rule of Practice 194 would establish a voluntary process for SBS Entities to seek relief in the event that they become subject to the statutory prohibition in Exchange Act Section 15F(6)(b).

In proposing Rule of Practice 194, the Commission has sought, where appropriate, to minimize the burdens and costs associated with proposed Rule of Practice 194 and to avoid duplication. For example, as proposed, the Commission would not require an application under proposed Rule of Practice 194 with respect to certain associated persons subject to a statutory disqualification previously granted relief (*i.e.*, by Commission, CFTC, SRO, or NFA). Rather, in such instances, SBS Entities would only be required to provide a brief notice to the Commission under proposed Rule of Practice 194(j)(2)(iii) (with respect to associated persons that are natural persons) and (j)(2)(iv) (with respect to associated person entities).

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**

Absent proposed Rule of Practice 194, SBS Entities seeking to apply for relief from Exchange Act Section 15F(b)(6) would be able to apply to the Commission directly, outside of a formal process, possibly looking to either Rule of Practice 193<sup>9</sup> or an analogous process as a guide. However, the Commission believes that such applications, due to the lack of clarity, would be more time-consuming, and would be more prone to errors or more likely to be deemed to contain insufficient information to allow the Commission to make a determination.

Under proposed Rule of Practice 194, SBS Entities should generally be aware of the information they are required to provide, as well as the standard of review. The Commission

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<sup>8</sup> An entity is not subject to the statutory prohibition in Exchange Act Section 15F(b)(6) until it becomes a security-based swap dealer or a major security-based swap participant pursuant to the Commission's rules. See 17 CFR 240.3a67-8, 240.3a67-9, 240.3a71-2.

In addition, on June 15, 2011, the Commission issued an order that, among other things, granted temporary relief from compliance with Exchange Act Section 15F(b)(6), and Exchange Act Section 29(b), 15 U.S.C. 78cc(b), concerning enforceability of contracts that would violate, among other provisions, Exchange Act Section 15F(b)(6). See Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps, Exchange Act Release No. 64678 (June 15, 2011), 76 FR 36287, 36301, 36305-07 (June 22, 2011) ("Temporary Exemptions Order"). Under the Temporary Exemptions Order, persons subject to a statutory disqualification who were, as of July 16, 2011, associated with an SBS Entity and who effected or were involved in effecting security-based swaps on behalf of such SBS Entity could continue to be associated with an SBS Entity until the date upon which rules adopted by the Commission to register SBS Entities became effective.

<sup>9</sup> 17 CFR 201.193.

also believes that clarity about the items that the Commission will consider in making a determination, while not altering the set of possible outcomes, will allow SBS Entities to make informed assessments as to the likelihood that the Commission will either grant or deny relief. Thus, proposed Rule of Practice 194 may conserve resources and may allow SBS Entities to make more-informed evaluations about the tradeoff between pursuing an application and either disassociating with or, in the case of natural persons, reassigning a person subject to a statutory disqualification.

Finally, paragraph (j) of proposed Rule of Practice 194 provides relief in cases where the Commission, the CFTC, an SRO, or a registered futures association has granted a prior application or otherwise granted relief from a statutory disqualification with respect to that associated person. To the extent that SBS Entities and other regulated entities use the same personnel or entities to effect security-based swaps, swaps, and securities transactions, this proposed rule may conserve resources in the sense that SBS Entities will not have to undergo duplicate review when decisions about relief from statutory disqualifications have already been made by the Commission or another regulatory authority.

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

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

**8. Consultations Outside the Agency**

The Commission has issued a release soliciting comment on the new “collection of information” requirements and associated paperwork burdens. A copy of the release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission’s public website, and made available through <http://www.sec.gov/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 CFR 1320.11(f).

**9. Payment or Gift**

Not applicable.

**10. Confidentiality**

The information collected pursuant to proposed Rule of Practice 194 will be kept confidential, subject to the provisions of applicable law. However, a notice pursuant to paragraph (i)(2) to proposed Rule of Practice 194 would be made publicly available on the Commission’s website.

11. Sensitive Questions

The collection of information includes Personally Identifiable Information (PII). In particular, the collection of information includes the name of the associated person that is subject to a statutory disqualification.

The Commission has published System of Records Notices for the collection of information relating to statutory disqualification processes and to security-based swap dealers and major security-based swap participants.<sup>10</sup> A Privacy Impact Assessment is not necessary as submissions pursuant to this rule will be paper submissions.

12. Burden of Information Collection

a. Respondents

The Commission has previously stated that it believes that, based on data obtained from the Depository Trust & Clearing Corporation and conversations with market participants, approximately 50 entities may fit within the definition of security-based swap dealer and up to five entities may fit within the definition of major security-based swap participant—55 SBS Entities in total.<sup>11</sup>

With respect to associated persons that are natural persons, the Commission has estimated that there will be 423 total associated persons that are natural persons at each SBS dealer and 63 total associated persons that are natural persons at each major participant, or 21,465 total associated persons that are natural persons.<sup>12</sup> The Commission anticipates that, on

<sup>10</sup> See Systems of Records Notice SEC-18, *Applications for Relief from Disqualification Filed under the Securities Act of 1933 and the Commission's Rules of Practice*, and SEC-55, *Information Pertaining or Relevant to SEC Regulated Entities and Their Activities*, available at <http://www.sec.gov/about/privacy/secprivacyoffice.htm>. These notices would be amended in the event that Rule of Practice 194 is adopted.

<sup>11</sup> See Application of “Security-Based Swap Dealer” and “Major Security-Based Swap Participant” Definitions to Cross-Border Security-Based Swap Activities, Exchange Act Release No. 72472 (June 25, 2014), 79 FR 47278, 47300 (Aug. 12, 2014) (“Cross-Border Adopting Release”).

<sup>12</sup> Based on an analysis of broker-dealer FOCUS reports, as of December 31, 2014, there were 3,954 broker-dealers that employed full-time registered representatives and were doing a public business; these broker-dealers each employed on average 69 registered representatives, or approximately 272,000 in total. However, based on our review of the 50 entities we believe may register as security-based swap dealers, the Commission believes the subset of clearing broker-dealers provides a better estimate. As of December 31, 2014, there were 447 clearing broker-dealers which had, on average, each employed 423 persons who were registered representatives; we use this average as the basis for our estimate of 21,150 natural persons associated with dealers. Note, however, 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, as well as other business lines such as prime brokerage services. Thus, it is possible that fewer people would be needed to facilitate this business.

Since registration requirements for major security-based swap participants are triggered by position thresholds, as opposed to activity thresholds for dealer registration, we anticipate that entities which may seek to register with the Commission as major security-based swap participants may more closely resemble hedge funds and investment advisors. To estimate the number of natural persons associated with major security-based swap participants, we use Form ADV filings by registered investment advisers. Based on this analysis, as of January 2, 2015 there were 11,506 registered investment advisers; these investment



an average annual basis, only a small fraction of the natural persons would be subject to a statutory disqualification. By way of comparison, of the nearly 4,000 currently registered broker-dealers and approximately 272,000 registered representatives,<sup>13</sup> based on information provided by FINRA to the Commission, for 2014, FINRA received 24 MC-400 applications with respect to individuals subject to a statutory disqualification seeking relief under the FINRA Rule 9520 Series. Given that the Commission estimates that there will be far fewer SBS Entities (55) and associated persons of SBS Entities that are natural persons (21,465 total associated persons that are natural persons), the Commission anticipates that SBS Entities will file for relief under Rule of Practice 194 with respect to substantially fewer associated persons that are natural persons.

In addition, to estimate the number of such persons, the Commission staff has conferred with NFA to assess how many associated persons of the 112 provisionally registered Swap Entities<sup>14</sup> have applied for relief from CEA 4s(b)(6)<sup>15</sup> (the analogous provision to Exchange Act Section 15F(b)(6)<sup>16</sup> for SBS Entities) for determination by NFA that, had the associated person applied for registration as an associated person of a Swap Entity, notwithstanding statutory disqualification, the application would have been granted.<sup>17</sup> NFA has informed Commission staff that, from October 2012 to July 22, 2015, NFA determined that in 9 out of 11 requests NFA would have granted registration with respect to the associated person subject to a statutory disqualification.

Accordingly, based on that available data, the Commission estimates that, on an average annual basis, of the 55 SBS Entities, the Commission would receive up to five applications in accordance with proposed Rule of Practice 194 with respect to associated person that are natural persons, and five notices pursuant to proposed Rule of Practice 194(j)(2)(iii) with respect to associated persons that are natural persons.

With respect to associated persons that are not natural persons, the Commission has estimated that as many as 868 entity persons may be associating with all SBS Entities.<sup>18</sup> In the

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advisers had an average 63 employees each. We use this average as the basis for our estimate of 315 natural persons associated with major security-based swap participants.

<sup>13</sup> Based on an analysis of regulatory filings, as of December 31, 2014, there are 3,954 broker-dealers that employed full-time registered representatives and were doing a public business; these broker-dealers each employed on average 69 registered representatives, or approximately 272,000 in total.

<sup>14</sup> See NFA SD/MSP Registry, <https://www.nfa.futures.org/NFA-swaps-information/regulatory-info-sd-and-msp/SD-MSP-registry.HTML>.

<sup>15</sup> 7 U.S.C. 6s(b)(6).

<sup>16</sup> 15 U.S.C. 78o-10(b)(6).

<sup>17</sup> See EasyFile AP Statutory Disqualification Form Submission, NFA, <https://www.nfa.futures.org/NFA-electronic-filings/easyFile-statutory-disqualification.HTML>.

<sup>18</sup> Based on an analysis of historical Form BD filings, broker-dealers with control affiliates had an average of 6.84 control affiliates that started to associate between 2000 and 2014, and have not ended the association by December 31, 2014. We preliminarily believe that it may be appropriate to scale the figure by a factor of two to account for complexity in business structures and for the fact that security-based swap dealers are likely to resemble some of the larger broker dealers, which results in an estimate of up to 684 (6.84\*50\*2=684) entities associated with security-based swap dealers. As discussed in our estimates of associated natural persons, SBS Entities will be limited to sales of security-based swaps, whereas broker-

Registration Adopting Release,<sup>19</sup> the Commission adopted Exchange Act Rule 15Fb6-1,<sup>20</sup> which provides that, unless otherwise ordered by the Commission, an SBS Entity, when it files an application to register with the Commission as a security-based swap dealer or major security-based swap participant, may permit an associated person associated that is not a natural person and that is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf, provided that the statutory disqualification(s) under Exchange Act Section 3(a)(39)(A) through (F)<sup>21</sup> occurred prior to the compliance date set forth in the Registration Adopting Release, and provided that it identifies each such associated person in the registration application. Therefore, such SBS Entities will not file an application or notice under proposed Rule of Practice 194 where Exchange Act Rule 15Fb6-1<sup>22</sup> is applicable.

The Commission preliminarily believes that Exchange Act Rule 15Fb6-1 will apply to the bulk of statutorily disqualified associated persons that are not natural persons, and that, on an average annual basis, a limited number of the associated persons that are not natural persons would be subject to a statutory disqualification. By way of comparison, in 2014, of the nearly 4,000 registered broker-dealers, FINRA received 10 MC-400A applications with respect to member firms (nine of which were related to the entity, while one was due to an owner/control person of the member firm being subject to a statutory disqualification), and the total number of MC-400A applications received during that five year period (from 2010 – 2014) was 63.<sup>23</sup> Because there would be far fewer SBS Entities, the Commission preliminarily estimates that, on an average annual basis, of the 55 SBS Entities, the Commission would receive up to two applications in accordance with proposed Rule of Practice 194 with respect to associated persons that are not natural persons, and two notices pursuant to proposed Rule of Practice

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dealers are generally engaged in the sale of a broader range of financial instruments, and it is possible that fewer entities would be needed to facilitate this business.

Using historical Form ADV filings for investment advisers with control persons as of March 2015, investment advisers with control persons had an average of approximately 18.35 control persons listed as firms or organizations that started to associate between 2000 and 2014, and have not ended the association by December 31, 2014. We preliminarily believe that it may be appropriate to scale the figure by a factor of two to account for complexity in business structures and for the fact that major swap participants are likely to be similar to some of the larger investment advisers, which results in an estimate of up to approximately 184 ( $18.35 * 5 * 2 = 183.5$ ) entities associated with major security-based swap market participants.

<sup>19</sup> Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 75611 (Aug. 5, 2015) (the “Registration Adopting Release”).

<sup>20</sup> 17 CFR 240.15Fb6-1.

<sup>21</sup> 15 U.S.C. 78c(a)(39)(A) – (F).

<sup>22</sup> 17 CFR 240.15Fb6-1.

<sup>23</sup> We note that under FINRA rules, only the FINRA member itself (*i.e.*, the broker-dealer entity) would apply under Form MC-400A, not associated persons that are entities. Therefore, these estimates may more closely represent the number of affected broker-dealers, rather than the number of statutorily disqualified entities seeking to associate. However, under Exchange Act Section 3(a)(39)(E), 15 U.S.C. 78c(a)(39)(E), a person may be subject to a statutory disqualification if that person has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described by paragraphs (A), (B), (C), or (D) of Exchange Act Section 3(a)(39). For purposes of identifying whether a member of an SRO is subject to a statutory disqualification under Exchange Act Section 3(a)(39), an associated person may include persons that are not natural persons. See FINRA Regulatory Notice 09-19, at 3.

194(j)(2)(iv) with respect to associated persons that are not natural persons.

Therefore, the Commission anticipates that, on an average annual basis, of the 55 SBS Entities, the Commission would receive up to five applications under proposed Rule of Practice 194 with respect to associated persons that are natural persons, two applications under proposed Rule of Practice 194 with respect to associated persons that are entities, and seven notices for natural persons and entities under proposed Rule of Practice 194(j)(2)(iii) and (j)(2)(iv). The Commission has sought comment on these estimates.

b. Description of Burdens

i. *Burden Associated with Filing Applications  
under Proposed Rule of Practice 194*

It is likely that the time necessary to complete an application under proposed Rule of Practice 194 would vary depending on the number of exhibits required to be submitted in accordance with proposed Rule of Practice 194(c) and (e), and the amount of information that would need to be discussed in the written statement, as specified in proposed Rule of Practice 194(d), (f) and (g).

Based on the Commission staff's estimates and experience,<sup>24</sup> the Commission estimates that the average time necessary for an SBS Entity to research the questions, and complete and file an application under Rule of Practice 194 (including any response under proposed Rule of Practice 194(h)), as well as the notice provided for in proposed paragraph (i)(2), if applicable, with respect to an associated person that is an entity would be approximately one work week, or 40 hours. The Commission believes that, for applications with respect to associated persons that are natural persons, the information requested under proposed Rule of Practice 194 is on average less than for entities, and that the written statement and supporting papers would require less time to complete. The Commission therefore estimates that for associated persons that are natural persons it would take SBS Entities approximately 75% of the time that it would take to research the questions, and complete and file an application under Rule of Practice 194 for associated persons that are entities, or 30 hours.

Given that the Commission estimates that, on an average annual basis, there will be five applications under proposed Rule of Practice 194 with respect to associated persons that are natural persons, the Commission estimates the total burden associated with filing such applications on average to be 150 hours on an annual basis.<sup>25</sup> Given that the Commission estimates that, on an average annual basis, there will be two applications under proposed Rule of Practice 194 with respect to associated persons that are entities, the Commission estimates the total burden associated with filing such applications on average to be 80 hours on an annual

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<sup>24</sup> For example, based on the experience relative to Form BD, the Commission has estimated the average time necessary for an SBS Entity to research the questions and complete and file a Form SBSE, including the accompanying schedules and disclosure reporting pages—which solicit information regarding statutory disqualification—to be approximately one work week, or 40 hours. See Registration Adopting Release, at Section IV.D.1.

<sup>25</sup> This estimate is based on the following: (30 hours) x (5 SBS Entities applying with respect to associated persons that are natural persons) = 150 hours total.

basis.<sup>26</sup>

**In summary, the Commission estimates that, over a three-year period, the total reporting burden associated with proposed Rule of Practice 194 with respect to associated persons that are natural persons would be approximately 450 hours,<sup>27</sup> or 150 hours per year<sup>28</sup> when annualized over three years. The average estimated burden per SBS Entity would be 90 hours, or 30 hours per year<sup>29</sup> when annualized over three years.**

**In summary, the Commission estimates that, over a three-year period, the total reporting burden associated with proposed Rule of Practice 194 with respect to associated persons that are entities would be approximately 240 hours,<sup>30</sup> or 80 hours per year<sup>31</sup> when annualized over three years. The average estimated burden per SBS Entity would be 120 hours, or 40 hours per year<sup>32</sup> when annualized over three years.**

*ii. Burden Associated with Filing Notices under Proposed Rule of Practice 194(j)(2)(iii) and (iv)*

The Commission has estimated that SBS Entities would provide notices pursuant to proposed Rule of Practice 194(j)(2)(iii) and (iv) for five natural persons and for two associated persons that are not natural persons on an average annual basis. The Commission believes that the average time necessary for an SBS Entity to research the questions, complete and file the brief notice under proposed Rule of Practice 194(j)(2)(iii) or 194(j)(2)(iv) would be less than for a full application under proposed Rule of Practice 194 and the Commission estimates that it would take approximately 3 hours per notice, or 15 hours total on an average annual basis for five natural persons<sup>33</sup> and 6 hours total on an average annual basis for two associated persons that are not natural persons.<sup>34</sup>

<sup>26</sup> This estimate is based on the following: (40 hours) x (2 SBS Entities applying with respect to associated persons that are entities) = 80 hours total.

<sup>27</sup> This estimate is based on the following: (30 hours) x (5 SBS Entities applying with respect to associated persons that are natural persons) x (3 years) = 450 hours total.

<sup>28</sup> 450 hours ÷ 3 = 150 hours per year.

<sup>29</sup> 450 hours (total burden to research the questions, and complete and file an application under Rule of Practice 194) ÷ 5 SBS Entities (estimated number of SBS Entities that will submit applications under Rule of Practice 194 with respect to associated persons that are natural persons) = 90 hours ÷ 3 = 30 hours per respondent.

<sup>30</sup> This estimate is based on the following: (40 hours) x (2 SBS Entities applying with respect to associated persons that are entities) x (3 years) = 240 hours total.

<sup>31</sup> 240 hours ÷ 3 = 80 hours per year.

<sup>32</sup> 240 hours (total burden to research the questions, and complete and file an application under Rule of Practice 194) ÷ 2 SBS Entities (estimated number of SBS Entities that will submit applications under Rule of Practice 194 with respect to associated persons that are entities) = 120 hours ÷ 3 = 40 hours per respondent.

<sup>33</sup> This estimate is based on the following: (3 hours) x (5 SBS Entities filing notices under proposed Rule of Practice 194(j)(2)(iii)) = 15 hours total.

<sup>34</sup> This estimate is based on the following: (3 hours) x (2 SBS Entities filing notices under proposed Rule of

**In summary, the Commission estimates that, over a three-year period, the total reporting burden associated with filing notices under proposed Rule of Practice 194(j)(2) (iii) would be approximately 45 hours,<sup>35</sup> or 15 per year<sup>36</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>37</sup> when annualized over three years.**

**In summary, the Commission estimates that, over a three-year period, the total reporting burden associated with filing notices under proposed Rule of Practice 194(j)(2) (iv), would be approximately 18 hours,<sup>38</sup> or 6 per year<sup>39</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>40</sup> when annualized over three years.**

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Practice 194(j)(2)(iv)) = 6 hours total.

<sup>35</sup> This estimate is based on the following: (3 hours) x (5 SBS Entities filing notices under proposed Rule of Practice 194(j)(2)(iii)) x (3 years) = 45 hours total.

<sup>36</sup> 45 hours ÷ 3 = 15 hours per year.

<sup>37</sup> 45 hours (total burden to file a notice under Rule of Practice 194(j)(2)(iii)) ÷ 5 SBS Entities (estimated number of total SBS Entities) = 9 hours ÷ 3 = 3 hours per respondent.

<sup>38</sup> This estimate is based on the following: (3 hours) x (2 SBS Entities filing notices under proposed Rule of Practice 194(j)(2)(iv)) x (3 years) = 18 hours total.

<sup>39</sup> 18 hours ÷ 3 = 6 hours per year.

<sup>40</sup> 18 hours (total burden to file a notice under Rule of Practice 194(j)(2) (iv)) ÷ 2 SBS Entities (estimated number of total SBS Entities) = 9 hours ÷ 3 = 3 hours per respondent.

## Summary of Hourly Burdens

Proposed Rule of Practice 194									
	Nature of Information Collection Burden	Type of Burden	Number of Respondents	Number of Responses Per Year	Initial Burden Per Response Per Year Per Respondent	Ongoing Burden Per Response Per Year Per Respondent	Annualized Burden Estimate Per Respondent	Annualized Hourly Burden Estimate Industry-Wide	Small Business Entities Affected
i.	<u>Burden Associated with Filing Applications</u>								
	Applications (natural persons)	Reporting	5	1	0	30	30	150	0
	Applications (entities)	Reporting	2	1	0	40	40	80	0
ii.	<u>Burden Associated with Filing Notices</u>								
	Notices (natural persons)	Reporting	5	1	0	3	3	15	0
	Notices (natural persons)	Reporting	2	1	0	3	3	6	0
								251	

**13. Costs to Respondents**

Not applicable.

**14. Costs to the Federal Government**

Not applicable.

**15. Reason for Changes in Burden**

Not applicable.

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

Not applicable.

**17. Display of OMB Approval Date**

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.