

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission
for Amendments to Rule 13n-4 in Connection with
Access to Data Obtained by Security-Based Swap Data Repositories

A. Justification

1. Necessity of Information Collection

Title VII of the Dodd-Frank Act provides for a comprehensive regulatory framework for security-based swaps (“SBSs”), including the regulation of security-based swap data repositories (“SDRs”).¹ These include requirements that SDRs make SBS data conditionally available to certain regulators and other authorities.²

The Commission has proposed Rules 13n-4(b)(9), (b)(10) and (d) to implement that data access requirement. Under those proposed Rules, SDRs would be required to provide SBS data to certain entities, subject to a confidentiality condition. The rule further would require SDRs to create and maintain information regarding such data access.

To satisfy the statutory confidentiality condition associated with the data access requirements,³ regulators and other authorities will enter into a memorandum of understanding (“MOU”) or other arrangement to address the confidentiality of the SBS information made available to the entity.

Also, in connection with the Commission’s statutory authority to determine other persons to be appropriate to access data pursuant to these provisions,⁴ certain regulators or other authorities not designated by statute may submit applications to the Commission requesting that they be deemed eligible to obtain such SBS data.

2. Purpose of, and Consequences of Not Requiring, the Information Collection

By allowing certain U.S. and non-U.S. regulators and other authorities to access security-based swap data from SDRs, implementation of the statutory data access provisions – including the confidentiality condition and the Commission’s authority to designate entities to access such information – will facilitate regulatory oversight of the SBS market and its participants, including oversight of systemic and other risks associated with the market. Implementation of those provisions also will promote compliance with applicable laws and regulations, including but not limited to compliance with the antifraud provisions of the federal securities laws.

¹ Pub. L. No. 111-203, § 761(a) (adding Exchange Act Section 3(a)(75) (defining SDR)) and § 763(i) (adding Exchange Act Section 13(n) (establishing a regulatory regime for SDRs)).

² See Exchange Act sections 13(n)(5)(G), (H). This summary describes the collection of information associated with the data access provisions adopted by the Dodd-Frank Act, as modified by section 86001(b) of Public Law 114-94, enacted in 2015.

³ See Exchange Act sections 13(n)(5)(H).

⁴ See Exchange Act sections 13(n)(5)(G)(v).

3. Role of Improved Information Technology and Obstacles to Reducing Burden

The rules are drafted in a flexible manner that does not mandate the method by which data is provided, and hence will facilitate the ability of regulators and other authorities to access such information. In particular, the proposed rules related to the statutory requirement that the Commission be notified of data requests, states that an SDR can satisfy that requirement by informing the Commission of the first instance of a request, and maintaining records of other requests. This approach is designed to account for the way the Commission expects entities are likely to access data from SDRs.

4. Duplication

Section 712(a)(2) of the Dodd-Frank Act provides that, before commencing any rulemaking regarding, among other things, SBSs or SDRs, the Commission must consult and coordinate with the Commodity Futures Trading Commission (“CFTC”) and prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible. Any person that is required to be registered as an SDR under Exchange Act Section 13(n) must register with the Commission (absent an exemption), regardless of whether that person is also registered with the CFTC under the Commodities Exchange Act as a swap data repository. The Commission believes that a person that registers with the Commission as an SDR is likely to also register with the CFTC as a swap data repository. As mandated by Section 712 of the Dodd-Frank Act, the Commission staff and CFTC staff have consulted and coordinated with one another regarding their respective Commissions’ rules regarding SDRs and swap data repositories. Commission staff has also consulted and coordinated with other prudential regulators.

5. Effects on Small Entities

The rule amendments will not have a significant economic impact on a substantial number of small entities.

6. Consequences of Less Frequent Collection

The rule amendments are intended to permit U.S. and non-U.S. regulators and other authorities to access SBS information in connection with overseeing the SBS markets and its participants, monitoring and controlling of risks including systemic risks, and promoting compliance with applicable requirements. A less frequent collection of information would impinge upon the ability of regulators and other authorities to see current information regarding the SBS market and its participants, and hence would conflict with all of those goals.

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

Because proposed rule 13n-4(b)(9), consistent with the Exchange Act, requires SDRs to make SBS information available “upon request” of a regulator or other authority, it is to be expected that SDRs will make available such information more often than quarterly. This collection of information is necessary, however, to ensure that regulators and other authorities have timely access to information in connection with the oversight of the SBS market and its participants.

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 C.F.R. 1320.11(f).

9. Payment of Gifts

Not applicable.

10. Confidentiality

SBS data provided by an SDR to a regulator or other authority pursuant to this provision will be subject to the confidentiality protections specified in an MOU or other arrangement between the Commission and the recipient entity.

The Commission will make public requests for a determination that an authority is appropriate to conditionally access security-based swap data, as well as Commission determinations issued in response to such requests. The Commission preliminarily expects that it will make publicly available the MOUs or other arrangements with the Commission used to satisfy the confidentiality and indemnification conditions.

Initial notices of requests for access provided to the Commission by repositories will be kept confidential, subject to the provisions of applicable law. To the extent that the Commission obtains subsequent requests for access that would be required to be maintained by the repositories, the Commission also will keep those records confidential, subject to the provisions of applicable law.

11. Sensitive Questions

The collections of information do not expressly include Personally Identifiable Information (“PII”). At the same time, however, Commission staff understands that there may be instances when certain information (including, but not limited to, the identity of a party to an SBS transaction) could be provided by a respondent in response to one of the collections of information. However, 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 proposed rule amendments is not likely to implicate the Federal Information Security Management Act of 2002 or the Privacy Act of 1974.

12. Estimate of Respondent Reporting Burden

The total reporting for the rule amendments for all respondents is 35,780 hours annually. This burden is broken down by collection of information below.

a. MOUs

Proposed rule 13n-4(b)(10) provides that entities that access security-based swap data pursuant to these data access provisions would be required to enter into MOUs or other arrangements with the Commission to address the confidentiality of the information provided. In some cases, those entities also would enter into MOUs or other arrangements in connection with the Commission’s determination of the entity as authorized to access such data (to the extent that the entity’s access is already determined by statute or by the proposed rules). The Commission estimates a total of 30 respondents for those provisions. The Commission estimates that on average, recipients of data would expend 500 hours in connection with negotiating these MOUs or other arrangements, for a one-time burden of 15,000 hours. This equates to 5,000 hours per year where when annualized over three years, or 166.67 hours per respondent when annualized over three years. The Commission estimates no ongoing burdens associated with this requirement. This collection is a reporting type of collection.

b. Requests for Access

Proposed rule 13n-4(b)(9)(x) provides that the Commission may determine that certain entities that are not identified by statute and/or the proposed rules may request that they may access such security-based swap data. The Commission estimates a total of 21 respondents may make requests for such determination. The Commission estimates that on average such entities would expend 40 hours in connection with such requests, for a one-time burden of 840 hours. This equates to 280 hours per year where annualized over three years, or 13.33 hours per respondent when annualized over three years. The Commission estimates no ongoing burdens associated with this requirement. This collection is a reporting type of collection.

c. Systems Costs

SDRs may be expected to incur systems-related costs associated with setting up access to security-based swap data for regulators and other authorities. The Commission estimates a total of 10 respondents may incur such costs. The Commission estimates that on average such entities would expend 7,800 hours in connection with providing such connectivity, for a one-time burden of 78,000 hours. This equates to 26,000 hours per year where annualized over three years, or 2,600 hours per respondent when annualized over three years. The Commission estimates no ongoing burdens associated with this requirement. This collection is a recordkeeping type of collection.

d. Providing Notification of Requests

Proposed rule 13n-4(d) provides that SDRs must inform the Commission when they receive the first request for security-based swap data from a particular entity. The Commission estimates a total of 10 respondents may incur such costs. The Commission estimates that such entities would expend 150 hours in connection with this notice requirement (based on each SDR providing 300 notices, at half-hour per notice), for a one-time burden of 1,500 hours. This equates to 500 hours per year where annualized over three years, or 50 hours per respondent when annualized over three years. The Commission estimates no ongoing burdens associated with this requirement. This collection is a reporting type of collection.

e. Records of requests

Proposed rule 13n-4(d) further provides that SDRs must maintain records of all information related to initial and subsequent requests for data access. The Commission estimates a total of 10 respondents for these provisions. The Commission estimates that compliance with this provision will require 360 hours initially and 280 hours annually per respondent, for a total burden of 3600 hours initially and 2,800 hours annually across ten respondents. This equates to 4,000 hours per year when annualized over three years or 400 hours per respondent when annualized over three years. This collection is a recordkeeping type of collection.

f. Summary of Hourly Burdens

The table below summarizes the Commission's estimates of the total hourly burden.

Collection of Information	Type of Burden	Total Number of Respondents	Total Number of Responses Per Year	Initial Burden Per Response Per Year Per Respondent	Ongoing Burden Per Response Per Year Per Respondent	Total Annualized Burden Per Year Per Respondent	Total Reporting Burden For All Respondents
Regulator MOUs related to confidentiality	Reporting	30	1	166.67	0.00	166.67	5,000
Requests for Commission determination	Reporting	21	1	13.33	0.00	13.33	280
Systems costs incurred by SDRs	Recordkeeping	10	1	2,600	0.00	2,600	26,000
Request notification costs incurred by SDRs	Reporting	10	300	0.17	0.00	50	500
Records of requests, maintained by SDRs	Recordkeeping	10	1	120	280	400	4,000
Totals							35,780

13. Estimate of Cost to Respondents

The total cost for all of the Rules and Form SDR for all respondents is approximately \$400,000 annually.

These costs arise in connection with proposed rule 13n-4(d), which provides that SDRs must maintain records of all information related to initial and subsequent requests for data access. The Commission estimates a total of ten respondents for these provisions. The Commission estimates that compliance with this provision will require \$40,000 annually per respondent, for a total cost of \$400,000 annually across ten respondents. This collection is a recordkeeping type of collection.

The table below summarizes the Commission's estimates of the total cost burden.

Collection of Information	Type of Burden	Total Number of Respondents	Total Number of Responses Per Year	Initial Cost Per Response Per Year Per Respondent	Ongoing Cost Per Response Per Year Per Respondent	Total Annualized Cost Per Year Per Year Per Respondent	Total Reporting Cost For All Respondents
Records of requests, maintained by SDRs	Recordkeeping	10	1	0	\$40,000	\$40,000	\$400,000

14. Cost to the Federal Government

Not applicable.

15. Changes in Burden

Not applicable.

16. Information Collections Planned for Statistical Purpose

Not applicable

17. Approval to Omit OMB Expiration Date

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

18. Exceptions to Certification

Not applicable.

B. Collection of Information Employing Statistical Methods.

The Rule amendments do not employ statistical methods.