

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based
Swap Participants

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, 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.¹ The final rules also establish regulations for the chief compliance officer functions within an SBS Entity.²

Final Rules 15Fh-1 through 15Fh-6 and 15Fk-1 require SBS Entities 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

¹ See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release 77617 (Apr. 14, 2016), 81 FR 29959 (May 13, 2016). See also Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants; Correction, Exchange Act Release 77617A (May 19, 2016), 81 FR 32643 (May 24, 2016).

² Commission staff has prepared separate supporting statements pursuant to the Paperwork Reduction Act (“PRA”) regarding final Rule 3a71-3(c) and Rule 3a71-6, which address the cross-border application of the business conduct standards and the availability of substituted compliance. The Office of Management and Budget (“OMB”) has assigned control number 3235-0717 to Final Rule 3a71-3(c) and 3235-0715 to Final Rule 3a71-6. Final Rule 3a67-10(d) is a definitional rule and does not have a PRA burden associated with it.

- Designate a chief compliance officer that is required to fulfill the described duties and provide an annual compliance report.

The final rules also require SBS Dealers to:

- Determine that recommendations they make regarding SBS are suitable for their counterparties.
- Establish, maintain and enforce written 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.”

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

- Make a reasonable determination that any security-based swap or trading strategy involving a security-based swap recommended by the SBS Dealer is in the best interests of the special entity whose identity is known at a reasonably sufficient time prior to the execution of the transaction to permit the SBS Dealer to comply with this obligation; and
- Make reasonable efforts to obtain such information that the SBS Dealer considers necessary to make a reasonable determination that a security-based swap or trading strategy involving a security-based swap is in the best interests of the known special entity.

In addition, the final rules 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;
- Undertakes a duty to act in the best interests of the special entity;
- Makes appropriate and timely disclosures to the special entity of material information concerning the security-based swap;
- Evaluates, consistent with any guidelines provided by the special entity, the fair pricing and the appropriateness of the security-based swap;
- Is independent of the security-based swap dealer or major security-based swap participant that is the counterparty to a proposed security-based swap.

Under the final rules, the special entity's independent representative must also be subject to pay-to-play regulations, and if the special entity is an ERISA plan, the independent representative must be an ERISA fiduciary.

The information that must be collected pursuant to the final rules is intended to increase accountability and transparency in the market. The information will therefore 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

Rule 15Fh-3(a)(1) requires 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)(1)), 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.

Rule 15Fh-3(a)(2) also requires the SBS Entity to determine whether a counterparty is a special entity, unless the transaction is executed on a registered or exempt SEF or registered national securities exchange, and the SBS Entity does not know the identity of the counterparty at a reasonably sufficient time prior to the transaction to permit the SBS Entity to comply with the obligations of the rule. 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 the event that a counterparty may elect to opt out of "special entity" status (as defined in Rule 15Fh-2(d)(4)), Rule 15Fh-3(a)(3) requires an SBS Entity to notify such counterparty of its right to opt out of special entity status. An SBS Entity may satisfy these verification requirements through any reasonable means including, among other things, obtaining written representations from the counterparty as to specific facts about the counterparty.

In addition to assisting the CCO in determining compliance with the statute and proposed rules, this collection of information would be used by staff in its examination and oversight program.

ii. Disclosures by SBS Entities

Rule 15Fh-3(b) requires an SBS Entity to disclose to a counterparty (other than an SBS Entity or Swap Entity) material information concerning the security-based swap in a manner reasonably designed to allow the counterparty to assess: (1) the material risks and characteristics of a particular security-based swap; and (2) any material incentives or conflicts of interest that the SBS Entity may have in connection with the security-based swap. These disclosure requirements do not apply unless the identity of the counterparty is known to the SBS Entity at a reasonably sufficient time prior to execution of the transaction to permit the SBS Entity to comply with the obligations of the rule. The rule also requires the SBS Entity to make a written record of any non-written disclosures made pursuant to this provision, and timely provide a

written version of these disclosures to counterparties no later than the delivery of the trade acknowledgement of the particular transaction.

For cleared security-based swaps, Rule 15Fh-3(c)(1) requires an SBS Entity to, upon request of the counterparty, disclose the daily mark to the counterparty (other than an SBS Entity or Swap Entity) the daily mark that the SBS Entity receives from the appropriate clearing agency. For uncleared security-based swaps, Rule 15Fh-3(c)(2) requires an SBS Entity to disclose the daily mark to the counterparty. Rule 15Fh-3(c)(2) also requires disclosure of the data sources and a description of the methodology and assumptions used to prepare the daily mark for an uncleared security-based swap, as well as promptly disclose any material changes to such data sources, methodology or assumptions during the term of the security-based swap. Rule 15Fh-3(c)(1) and (2) also require an SBS Entity to provide the daily mark without charge to the counterparty, without restrictions on the counterparty's internal use of the daily mark.

Rule 15Fh-3(d) requires an SBS Entity to disclose information regarding clearing rights to its counterparties (other than an SBS Entity or Swap Entity), so long as the identity of the counterparty is known to the SBS Entity at a reasonably sufficient time prior to execution of the transaction to permit the SBS Entity to comply with the obligations of the rule. Before entering into a security-based swap that is subject to the clearing requirements of Section 3C(a) of the Exchange Act, the SBS Entity must disclose to the counterparty the names of the clearing agencies that accept the security-based swap for clearing, and through which of those clearing agencies the SBS Entity is authorized or permitted, directly or through a designated clearing member, to clear the security-based swap; disclose to the counterparty whether any of the named clearing agencies satisfy the standard for clearing under Section 3C(a)(1) of the Exchange Act; and notify the counterparty that it shall have the sole right to select which clearing agency shall be used to clear the security-based swap. For security-based swaps that are not subject to the clearing requirements of Section 3C(a) of the Exchange Act, before entering into a security-based swap, the SBS Entity shall determine whether the security-based swap is accepted for clearing by one or more clearing agencies; disclose to the counterparty the names of the clearing agencies that accept the security-based swap for clearing, and whether the SBS Entity is authorized or permitted, directly or through a designated clearing member, to clear the security-based swap through such clearing agencies; and notify the counterparty that it may elect to require clearing of the security-based swap and shall have the sole right to select the clearing agency at which the security-based swap will be cleared, provided it is a clearing agency at which the SBS Entity is authorized or permitted, directly or through a designated clearing member, to clear the security-based swap. To the extent that the disclosures required by Rule 15Fh-3(d) are not provided in writing prior to the execution of the transaction, the SBS Entity is required to make a written record of the non-written disclosures and provide the counterparty with a written version of these disclosures no later than the delivery of the trade acknowledgement for the transaction.

The disclosures that SBS Entities must provide to their counterparties (other than SBS Entities, swap dealers, or major swap participant) are intended to help counterparties understand the material risks and characteristics of a particular security-based swap, the counterparty's clearing rights, 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 will assist the

counterparty in assessing the transaction. The disclosures will provide counterparties with a better understanding of the expected performance of the security-based swap under various market conditions, and provide counterparties with additional transparency and insight into the pricing and collateral requirements of security-based swaps.

iii. Know Your Counterparty and Recommendations

Rule 15Fh-3(e) requires an SBS Dealer to establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each counterparty whose identity is known to the SBS Dealer that are necessary for conducting business with such counterparty. The essential facts are: (1) facts required to comply with applicable laws, regulations and rules; (2) facts required to implement the SBS Dealer's credit and operational risk management policies in connection with transactions entered into with such counterparty; and (3) information regarding the authority of any person acting for such counterparty.

Rule 15Fh-3(f)(1) requires an SBS Dealer recommending a security-based swap or trading strategy involving a security-based swap to a counterparty (other than an SBS Entity or a Swap Entity) to: (i) undertake reasonable diligence to understand the potential risks and rewards associated with the recommendation; and (ii) have a reasonable basis to believe that the recommendation is suitable for the counterparty. To establish a reasonable basis for a recommendation, an SBS Dealer must have or obtain relevant information regarding the counterparty, including the counterparty's investment profile, trading objectives, and its ability to absorb potential losses associated with the recommended security-based swap or trading strategy involving a security-based swap.

Under Rule 15Fh-3(f)(2), an SBS Dealer may also fulfill its suitability obligations under Rule 15Fh-3(f)(1)(ii) with respect to an institutional counterparty (defined as a counterparty that is an eligible contract participant as defined in clauses (A)(i), (ii), (iii), (iv), (viii), (ix) or (x), or clause (B)(ii) (other than a person described in clause (A)(v)) of Section 1a(18) of the Commodity Exchange Act and the rules and regulations thereunder, or any person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million) if: (i) the SBS Dealer reasonably determines that the counterparty (or its agent) is capable of independently evaluating the investment risks with regard to the relevant security-based swap or trading strategy involving a security-based swap; (ii) the counterparty (or its agent) affirmatively represents in writing that it is exercising its independent judgment in evaluating the recommendations of the SBS Dealer with regard to the relevant security-based swap or trading strategy; and (iii) the SBS Dealer discloses to the counterparty that it is acting in its capacity as a counterparty and is not undertaking to assess the suitability of the security-based swap or trading strategy for the counterparty. Under Rule 15Fh-3(f)(3), an SBS Dealer will be deemed to have satisfied the requirements of Rule 15Fh-3(f)(2)(i) if it receives written representations that: (i) in the case of a counterparty that is not a special entity, the counterparty has complied in good faith with written policies and procedures that are reasonably designed to ensure that the persons responsible for evaluating the recommendation and making trading decisions on behalf of the counterparty are capable of doing so; and (ii) in the case of a counterparty that is a special entity, satisfy the terms of the safe harbor in Rule 15Fh-5(b).

These collections of information will help an SBS Dealer comply with applicable laws, regulations and rules. They will 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 will 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 will also use these collections of information in its examination and oversight program.

iv. Fair and Balanced Communications

Rule 15Fh-3(g) requires an SBS Entity to communicate with its counterparties in a fair and balanced manner based on principles of fair dealing and good faith. The rule requires that: (1) communications provide a sound basis for evaluating the facts with regard to a particular security-based swap or trading strategy involving a security-based swap; (2) communications not imply that past performance will recur or make any exaggerated or unwarranted claim, opinion, or forecast; and (3) any statement referring to potential opportunities or advantages presented by a particular security-based swap be balanced by an equally detailed statement of the corresponding risks.

The collection of information concerning the risks of a security-based swap will assist an SBS Entity in communicating with counterparties in a fair and balanced manner. It will 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 will assist the counterparty in making more informed investment decisions. The Commission staff will also use this collection of information in its examination and oversight program.

v. Supervision

Rule 15Fh-3(h) requires an SBS Entity to establish and maintain a system to supervise, and to diligently supervise, its business and the activities of its associated persons. Such a system shall be reasonably designed to prevent violations of the provisions of applicable federal securities laws and the rules and regulations thereunder relating to its business as an SBS Entity. At a minimum, the supervisory system must: (i) designate at least one person with authority to carry out supervisory responsibilities for each type of business in which the SBS Entity engages for which registration as an SBS Entity is required; (ii) use reasonable efforts to determine all such supervisors are qualified, either by virtue of experience or training, to carry out their assigned responsibilities; and (iii) establish, maintain and enforce written policies and procedures addressing the supervision of the types of security-based swap business in which the SBS Entity is engaged and the activities of its associated persons that are reasonably designed to prevent violations of applicable securities laws and rules and regulations thereunder.

Such written policies and procedures must include, at a minimum, procedures: (a) for the review by a supervisor of transactions for which registration as an SBS Entity is required; (b) for the review by a supervisor of incoming and outgoing written (including electronic) correspondence with counterparties or potential counterparties and internal written communications relating to the SBS Entity's security-based swap business; (c) for a periodic review, at least annually, of the security-based swap business in which the SBS Entity engages that is reasonably designed to assist in detecting and preventing violations of applicable federal securities laws and regulations; (d) to conduct a reasonable investigation regarding the good character, business repute, qualifications, and experience of any person prior to that person's association with the SBS Entity; (e) to consider whether to permit an associated person to establish or maintain a securities or commodities account or a trading relationship in the name of, or for the benefit of, such associated person at another financial institution, and if permitted, to supervise the trading at such institution; (f) describing the supervisory system, including the titles, qualifications and locations of supervisory persons and the responsibilities of each supervisory person with respect to the types of business in which the SBS Entity is engaged; (g) prohibiting an associated person who performs a supervisory function from supervising his or her own activities or reporting to, or having his or her compensation or continued employment determined by, a person or persons he or she is supervising; provided that if the SBS Entity determines, with respect to any of its supervisory personnel, that compliance with this requirement is not possible because of the firm's size or a supervisory person's position within the firm, then the SBS Entity must document the factors used to reach such determination and how the supervisory arrangement otherwise complies with this rule, and include a summary of such determination in the annual compliance report prepared by the SBS Entity's CCO pursuant to Rule 15Fk-1(c); (h) reasonably designed to prevent the supervisory system from being compromised due to conflicts of interest that may be present with respect to the associated person being supervised, including the position of such person, the revenue such person generates for the SBS Entity, or any compensation that the associated person conducting the supervision may derive from the associated person being supervised; and (i) reasonably designed, taking into consideration the nature of the SBS Entity's business, to comply with the duties set forth in Section 15F(j) of the Exchange Act.

Rule 15Fh-3(h)(3) provides that an SBS Entity (or associated person of an SBS Entity) will not be deemed to have failed to diligently supervise another person if that person is not subject to his or her supervision, or if: (i) the SBS Entity has established and maintained written policies and procedures (as required in Rule 15Fh-3(h)(2)(iii)), and a documented system for applying those policies and procedures that would reasonably be expected to prevent and detect, insofar as practicable, any violation of the federal securities laws and the rules and regulations thereunder relating to security-based swaps; and (ii) the SBS Entity or associated person has reasonably discharged the duties and obligations required by such written policies and procedures and documented system and did not have a reasonable basis to believe that such written policies and procedures and documented system were not being followed.

The collection of information in connection with the establishment, maintenance and enforcement of a supervisory system will 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 in determining

whether remediation efforts are required. The collection of information under Rule 15Fh-3(h) will also be useful to supervisors in understanding and carrying out their supervisory responsibilities. The Commission staff will also use this collection of information in its examination and oversight program.

vi. SBS Dealers Acting as Advisors to Special Entities

Rule 15Fh-4(b)(1) imposes the duty on an SBS Dealer that acts as an advisor to a special entity regarding a security-based swap to make a reasonable determination that any security-based swap or trading strategy involving a security-based swap recommended by the SBS Dealer is in the best interests of the special entity. Paragraph (b)(2) also requires an SBS Dealer acting as an advisor to a special entity to make reasonable efforts to obtain such information as it considers necessary to make a reasonable determination that a security-based swap or related trading strategy is in the best interests of the special entity. The information that must be obtained to make this reasonable determination includes, but is not limited to: (i) the authority of the special entity to enter into a security-based swap; (ii) the financial status and future funding needs of the special entity; (iii) the tax status of the special entity; (iv) the hedging, investment, financing or other objectives of the special entity; (v) the experience of the special entity with respect to security-based swaps, generally, and security-based swaps of the type and complexity being recommended; (vi) whether the special entity has the financial capability to withstand changes in market conditions during the term of the security-based swap; and (vii) such other information as is relevant to the particular facts and circumstances of the special entity, market conditions and the type of security-based swap or trading strategy being recommended. However, the requirements of Rule 15Fh-4(b) do not apply to a security-based swap if: (i) the transaction is executed on a registered or exempt SEF or a registered national securities exchange; and (ii) the SBS Dealer does not know the identity of the counterparty at a reasonably sufficient time prior to execution of the transaction to permit the SBS Dealer to comply with the obligations of this rule.

Rule 15Fh-2(a) generally provides that an SBS Dealer acts as an advisor to a special entity when it recommends a security-based swap or security-based swap trading strategy to that special entity. Rule 15Fh-2(a)(1) provides a safe harbor under which an SBS Dealer will not be deemed to act as an advisor to a special entity that is subject to Title I of ERISA if: (i) the special entity represents in writing that it has a fiduciary as defined in Section 3 of ERISA that is responsible for representing the special entity in connection with the security-based swap; (ii) the fiduciary represents in writing that it acknowledges that the SBS Dealer is not acting as an advisor; and (iii) the special entity represents in writing that (a) it will comply in good faith with written policies and procedures reasonably designed to ensure that any recommendation the special entity receives from the SBS Dealer involving a security-based swap transaction is evaluated by a fiduciary before it is entered into; or (b) that any recommendation the special entity receives from the SBS Dealer involving a security-based swap transaction will be evaluated by a fiduciary before the transaction is entered into.

Rule 15Fh-2(a)(2) provides a safe harbor for transactions between an SBS Dealer and any special entity. Under this rule, an SBS Dealer that recommends a security-based swap or security-based swap trading strategy to any special entity (other than a special entity subject to

Title I of ERISA) will not be deemed to act as an advisor to that special entity if the special entity represents in writing that it acknowledges that the SBS Dealer is not acting as an advisor, and that it will rely on advice from a qualified independent representative, as defined in Rule 15Fh-5(a). The SBS Dealer must also disclose to the special entity that it is not undertaking to act in the best interests of the special entity, as otherwise required by Section 15F(h)(4) of the Exchange Act.

The information that will be collected pursuant to Rule 15Fh-4(b) will assist an SBS Dealer that is acting as an advisor to a special entity to make a reasonable determination that any security-based swap or trading strategy involving a security-based swap recommended by the SBS Dealer is in the best interests of the special entity. Information collected pursuant to Rule 15Fh-2(a) will assist an SBS Dealer seeking to establish that it is not acting as an advisor to a special entity. These collections of information will both assist a CCO in determining whether the SBS Dealer has complied with the business conduct standards. The Commission staff will also use this collection of information in its examination and oversight program.

vii. SBS Entities Acting as Counterparties to Special Entities

Rule 15Fh-5(a)(1) requires an SBS Entity that offers to enter into or enters into a security-based swap with a special entity (other than a special entity that is an employee benefit plan subject to Title I of ERISA), to have a reasonable basis to believe that the special entity has a qualified independent representative that meets certain specified qualifications. For purposes of Rule 15Fh-5(a)(1), a qualified independent representative must: (i) have sufficient knowledge to evaluate the transaction and related risks; (ii) not be subject to a statutory disqualification; (iii) undertake a duty to act in the best interests of the special entity; (iv) make appropriate and timely disclosures to the special entity of material information concerning the security-based swap; (v) evaluate, consistent with any guidelines provided by the special entity, the fair pricing and appropriateness of the security-based swap; (vi) in the case of a special entity defined in Rule 15Fh-2(d)(2) or (5), be subject to the pay-to-play prohibitions of the Commission, the CFTC, or a self-regulatory organization that is subject to the jurisdiction of the Commission or the CFTC (unless the independent representative is an employee of the special entity); and (vii) be independent of the SBS Entity that is the counterparty to a proposed security-based swap.

Rule 15Fh-5(a)(1) also provides that a representative of a special entity will be “independent” of an SBS Entity if the representative does not have a relationship with the SBS Entity, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the representative. In addition, a special entity’s representative will be deemed to be “independent” of an SBS Entity if: (1) the representative is not and was not an associated person of the SBS Entity within one year of representing the special entity in connection with the security-based swap; (2) the representative provides timely disclosures to the special entity of all material conflicts of interest that could reasonably affect the judgment or decision making of the representative with respect to its obligations to the special entity, and complies with policies and procedures reasonably designed to manage and mitigate such material conflicts of interest; and (3) the SBS Entity did not refer, recommend, or introduce the representative to the special entity within one year of the representative’s representation of the special entity in connection with the security-based swap.

Rule 15Fh-5(a)(2) provides that an SBS Entity that offers to enter into or enters into a security-based swap with a special entity as defined in Rule 15Fh-2(d)(3) (any employee benefit plan that subject to Title I of ERISA) must have a reasonable basis to believe the special entity has a representative that is a fiduciary as defined in Section 3 of ERISA.

Rule 15Fh-5(b) provides safe harbors for SBS Dealers seeking to form a reasonable basis regarding the qualifications of the independent representative. Under Rule 15Fh-5(b)(1), an SBS Entity shall be deemed to have a reasonable basis to believe that a special entity (other than an ERISA special entity) has a representative that satisfies the requirements of Rule 15Fh-5(a)(1) if: (i) the special entity represents in writing to the SBS Entity that it has complied in good faith with written policies and procedures reasonably designed to ensure that it has selected a representative that satisfies the requirements of Rule 15Fh-5(a)(1), and that such policies and procedures provide for ongoing monitoring of the performance of such representative consistent with Rule 15Fh-5(a)(1); and (ii) the representative represents in writing to the special entity and the SBS Entity that the representative: (a) has policies and procedures reasonably designed to ensure that it satisfies the applicable requirements of Rule 15Fh-5(a)(1); (b) meets the independence requirements of Rule 15Fh-5(a)(1)(vii); and (c) is legally obligated to comply with the requirements of Rule 15Fh-5(a)(1) by agreement, condition of employment, law, rule, regulation, or other enforceable duty.

Under Rule 15Fh-5(b)(2), an SBS Entity shall be deemed to have a reasonable basis to believe that an ERISA special entity has a representative that satisfies the requirements of Rule 15Fh-5(a)(2), provided that the special entity provides in writing to the SBS Entity the representative's name and contact information, and represents in writing that the representative is a fiduciary as defined in Section 3 of ERISA.

Under Rule 15Fh-5(c), before initiation of a security-based swap, an SBS Dealer must disclose to the special entity in writing the capacity in which the SBS Dealer is acting in connection with the security-based swap, and, if the SBS Dealer engages in business with the counterparty in more than one capacity, the SBS Dealer must disclose the material differences between such capacities and any other financial transaction or service involving the counterparty to the special entity.

Under Rule 15Fh-5(d), formerly Rule 15Fh-5(c), the provisions of Rule 15Fh-5 do not apply when two conditions are satisfied: (1) the transaction is executed on an registered or exempt SEF or registered national securities exchange; and (2) the SBS Entity is unaware of the counterparty's identity, at a reasonably sufficient time prior to the execution of the transaction to permit the SBS Entity to comply with the obligations of the rule.

The information collected under Rule 15Fh-5(a) will assist an SBS Entity in forming a reasonable basis that the special entity has a qualified, independent representative that meets the requirements of the rule. Disclosures under Rule 15Fh-5(c) regarding the capacity in which an SBS Entity is operating will provide greater clarity to special entities regarding whether an SBS Entity is acting in its interest, or as a counterparty or principal with interests that are potentially adverse to the special entity. These collections of information will also assist the CCO in determining whether the SBS Entity has complied with the relevant provisions of the Exchange

Act. The Commission staff will also use this collection of information in its examination and oversight program.

viii. Political Contributions

Rule 15Fh-6(b) prohibits an SBS Dealer from offering to enter into, or entering into a security-based swap, or a trading strategy involving a security-based swap, with a municipal entity within two years after any contribution by the SBS Dealer or its covered associates to an official of such municipal entity, subject to certain exceptions. These prohibitions do not apply to certain contributions made by an SBS Dealer's covered associate if the SBS Dealer discovered the contribution within 120 calendar days of the date of such contribution, the contribution did not exceed \$350, and the covered associate obtained a return of the contribution within 60 calendar days of the date of discovery of the contribution by the SBS Dealer. However, a SBS dealer may not rely on that provision more than three times in any 12-month period if it has more than 50 covered associated, and no more than twice if it has 50 or fewer covered associates. The Commission may also, upon application, exempt a security-based swap dealer from the prohibitions of the rule after consideration of several factors.

The provisions of Rule 15Fh-6 do not apply when two conditions are satisfied: (1) the transaction is executed on an registered or exempt SEF or registered national securities exchange; and (2) the SBS Dealer is unaware of the counterparty's identity, at a reasonably sufficient time prior to the execution of the transaction to permit the SBS Dealer to comply with the obligations of the rule.

Rule 15Fh-6 is intended to deter SBS Dealers from participating, even indirectly, in pay to play practices. The information collected pursuant to this rule will assist the SBS Dealer and the Commission in verifying this deterrence. The rule will also assist the CCO in determining whether the SBS Dealer has complied with relevant provisions of the Exchange Act. The Commission staff will also use this collection of information in its examination and oversight program.

ix. Chief Compliance Officer

Rule 15Fk-1 requires an SBS Entity to designate an individual to serve as CCO on its registration form. Under Rule 15Fk-1(b)(1) the CCO must report directly to the board of directors or senior officer of the SBS Entity. Under Rule 15Fk-1(b)(2), the CCO must take reasonable steps to ensure that the SBS Entity establishes, maintains, and reviews written policies and procedures reasonably designed to achieve compliance with the Exchange Act and the rules and regulations thereunder relating to its business as an SBS Entity by: (1) reviewing the SBS Entity's compliance with the SBS Entity requirements described in Section 15F of the Exchange Act and the rules and regulations thereunder (where such review shall involve preparing the SBS Entity's annual assessment of its written policies and procedures reasonably designed to achieve compliance with Section 15F of the Exchange Act and the rules and regulations thereunder); (2) taking reasonable steps to ensure the SBS Entity establishes, maintains, and reviews policies and procedures reasonably designed to remediate non-compliance issues identified by the CCO through any means, including any compliance office

review, look-back, internal or external audit finding, self-reporting to the Commission and other appropriate authorities, or complaint that can be validated; and (3) taking reasonable steps to ensure that the SBS Entity establishes and follows procedures reasonably designed for the handling, management response, remediation, retesting, and resolution of non-compliance issues. Under Rule 15Fk-1(b)(3), the CCO must take reasonable steps to resolve any material conflicts of interest that may arise, in consultation with the board or the senior officer of the SBS Entity. Under Rule 15Fk-1(b)(4), the CCO must administer each policy and procedure that is required to be established pursuant to Section 15F of the Exchange Act and the rules and regulations thereunder.

Under Rule 15Fk-1(c), the CCO must also prepare and sign an annual compliance report that must be submitted to the Commission within 30 days following the deadline for filing the SBS Entity's annual financial report with the Commission pursuant to Section 15F of the Exchange Act and the rules and regulations thereunder. This annual compliance report must contain a description of the written policies and procedures of the SBS Entity described in Rule 15Fk-1(b), outlined above, including the code of ethics and conflict of interest policies. The compliance report must also include, at a minimum, a description of: (1) the SBS Entity's assessment of the effectiveness of its policies and procedures relating to its business as an SBS Entity; (2) any material changes to the policies and procedures since the date of the preceding compliance report; (3) any areas for improvement and recommended potential or prospective changes or improvements to its compliance program and resources devoted to compliance; (4) any material non-compliance matters identified; and (5) the financial, managerial, operational, and staffing resources set aside for compliance with the Exchange Act and the rules and regulations thereunder relating to its business as an SBS Entity, including any material deficiencies in such resources. The report must be submitted to the board of directors and audit committee (or equivalent bodies) and the senior officer of the SBS Entity prior to submission to the Commission. The report also must be discussed in one or more meetings (addressing the obligations of this rule) that were conducted by the senior officer with the CCO in the preceding 12 months, and must include a certification by the CCO or senior officer that, to the best of his or her knowledge and reasonable belief and under penalty of law, the information contained in the compliance report is accurate and complete in all material respects.

The final rule allows an SBS Entity to incorporate by reference sections of a compliance report that has been submitted with the current or immediately preceding reporting period to the Commission, and allows an SBS Entity to request from the Commission an extension of time to submit its compliance report, provided that the SBS Entity's failure to timely submit the report could not be eliminated by the SBS Entity without unreasonable effort or expense. Extensions of the deadline will be granted at the discretion of the Commission. The final rule also requires an SBS Entity to promptly submit an amended compliance report if material errors or omissions in the report are identified.

Under Rule 15k-1(d), the compensation and removal of the CCO shall require the approval of a majority of the board of directors of the SBS Entity.

The information collected under Rule 15Fk-1 will assist the CCO in overseeing and administering the SBS Entity's compliance with relevant provisions of the Exchange Act. The

Commission staff will also use this collection of information in its examination and oversight program.

3. Consideration Given to Information Technology

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

4. Duplication

Because security-based swaps were largely unregulated prior to this rulemaking, the information was not generally otherwise filed with the Commission. The staff expects that many SBS Entities 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.

5. Effect on Small Entities

Based on the existing information about the SBS market, we believe 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.” 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. Thus, we believe 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 final rules are not inconsistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The Commission requested comment on the collection of information requirements in the proposing release in July 2011.³ The Commission received one general comment in response to

³ See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Swap Participants, Exchange Act Release No. 34-64766 (June 29, 2011), 76 FR 42395 (July 18, 2011)

this request, which asserted that the proposing release did not include an analysis of the costs associated with the requirement regarding disclosure of capacity.⁴ However, the Commission received no comments regarding the collection of information requirements or the associated paperwork burdens described in the proposing release. General 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>.

In addition, Commission staff consulted with representatives of various market participants through public conferences, meetings and informal exchanges regarding the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, and the data elements to be recorded, disclosed or reported.

9. Payment of Gift

Not applicable.

10. Confidentiality

The Commission believes the information collected pursuant to Rules 15Fh–3 to 15Fh–6 and 15Fk–1 will 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, we do not believe that the collection of information will contain Personally Identifiable Information (“PII”).⁵

(“Proposing Release”). See also Business Conduct Standards for Security-Based Swap Dealers and Major Security-Swap Participants; Correction, Exchange Act Release No. 34-64766 (Aug. 3, 2011), 76 FR 46668 (Aug. 3, 2011).

⁴ See letter from John F. Damgard, President, Futures Industry Association; Robert Pickel, Executive Chairman, International Swaps and Derivatives Association, Inc.; and Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, Securities Industry and Financial Markets Association, dated Aug. 26, 2011, available at <http://www.sec.gov/rules/proposed.shtml>.

⁵ 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.

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 5 entities may come within the definition of major security-based swap participant. Further, we estimate that approximately 35 entities will be dually registered with the CFTC as swap entities. Accordingly, we have used these estimates for the calculation of reporting burdens.

The staff estimates that:

- **15Fh-3(a) – Verification of Status:** Approximately 55 SBS Entities (of which we expect approximately 35 will be dually registered with the CFTC as Swap Entities) will be required to verify whether a counterparty is an ECP or special entity, as required by Rule 15Fh-3(a). These verification requirements are generally the same under the business conduct standards adopted by the CFTC. However, Rule 15Fh-3(a)(3) requires an SBS Entity to verify whether a counterparty is eligible to elect not to be a special entity and if so, to notify the counterparty if its right to opt out of special entity status. To note, Rule 15Fh-2(d)(4) includes employee benefit plans that are defined in section 3 of ERISA, not otherwise defined as a special entity, within the special entity definition, unless such employee benefit plan elects to opt out of special entity status. In contrast, the corollary CFTC rule allows employee benefit plans defined in section 3 of ERISA to opt in to special entity status, and requires SBS Entities to notify counterparties eligible to opt in of their ability to do so.

SBS Entities – Adherence Letter

We estimate that approximately 55 SBS Entities (of which we expect approximately 35 will be dually registered with the CFTC as Swap Entities) will be required to verify whether a counterparty is an ECP or special entity, as required by Rule 15Fh-3(a). As noted above, Rule 15Fh-3(a)(3) differs from the CFTC’s rule, which instead includes an opt-in for plans “defined in” ERISA, but not subject to Title I of ERISA. We understand that industry has developed protocols and questionnaires that allow the counterparty to indicate its status, whether or not it is a special entity and whether it elects to be treated as a special entity. As a result of these protocols and questionnaires, we continue to believe that these dually registered SBS Entities will not incur any start-up or ongoing burdens in complying with Rules 15Fh-3(a)(1) and (2) because they already adhere to the relevant protocols to obtain the information under the CFTC’s business conduct standards. The remaining 20 SBS Entities will each incur \$500 in start-up burdens to adhere to the protocols. In addition, each counterparty that does not already adhere to the protocols will incur \$500 in start-up burdens to adhere to the protocols. In addition to the \$500 fee to adhere to the protocol, in order to adhere to the protocol, an adherence letter must also be submitted, the form of which is provided online. Accordingly, we

conservatively estimate that one hour will be needed to input the data required to generate the adherence letter for an aggregate total reporting burden of 20 hours.⁶

SBS Participants – Adherence Letter

We believe that approximately 7,412 of the 10,900 security-based swap market participants (which include SBS Entities and counterparties) are also swap market participants and likely already adhere to the relevant protocol. These 7,412 market participants would not have any start-up burdens or ongoing burdens with respect to verification. The remaining 3,488 market participants would incur \$500 each to adhere to the protocol and one hour for the adherence letter for an aggregate total reporting burden of 3,488 hours.⁷

SBS Entities – Notice

We also anticipate that all 55 SBS Entities will incur, on average, an initial internal burden of 30 minutes to prepare the notice required pursuant to Rule 15Fh-3(a)(3) for counterparties defined in Rule 15Fh-2(d)(4), for an aggregate total reporting burden of 27.5 hours.

We do not anticipate any ongoing burdens with respect to this rule.

Counterparties – Certificate Regarding Representations

We also anticipate that in connection with each transaction, SBS Entities will require counterparties to provide a certificate indicating that there are no changes to the representations included in the protocol and that reliance on those representations would be reasonable. We believe that there are approximately 10,900 security-based swap market participants (which include SBS Entities and counterparties). We believe that approximately 7,412 of the 10,900 security-based swap market participants (which include SBS Entities and counterparties) are also swap market participants and likely already adhere to the relevant protocol. These 7,412 market participants would not have any start-up burdens or ongoing burdens with respect to verification. The remaining 3,488 market participants less the 20 SBS Entities would incur \$500 each to adhere to the protocol and one internal hour for the adherence letter for an aggregate total reporting burden of 3,468 hours.⁸

⁶ The estimate is based on the following calculation: (20 SBS Entities) x (1 hours) = 20 hours. For purposes of Form 83-I, the annualized burden is 20 hours ÷ 3 years = 6.67 hours industry-wide or .33 hours per respondent.

⁷ Although we understand that ISDA offers bulk pricing for multiple entities that are part of the same corporate group or for fund families, we do not have the data as to how many of the 3,488 market participants are related entities that would be able to take advantage of this bulk pricing. As a result, we have conservatively estimated that each of the 3,488 market participants would incur the \$500 fee and the hour for the adherence letter. The estimate is based on the following calculation: (3,488 market participants) x (1 hours) = 3,488 hours. For purposes of Form 83-I, the annualized burden is 3,488 hours ÷ 3 years = 1,162.67 hours industry-wide or .33 hours per respondent.

⁸ As a result, we have conservatively estimated that each of the 3,488 market participants less the 20 SBS Entities would incur the \$500 fee and the hour for the adherence letter. The estimate is based on

We do not anticipate any ongoing burdens with respect to this rule.

- **15Fh-3(b), (c), and (d) – Disclosure by SBS Entities:** Pursuant to Rule 15Fh-3(b), (c), and (d), SBS Entities would be required to provide certain disclosures to market participants. Based on our experience with burden estimates for similar disclosure requirements,⁹ as well as our discussions with market participants, we understand that the SBS Entities that are dually registered with the CFTC already provide their counterparties with disclosures similar to those that are required under Rules 15Fh-3(b) and (c). To the extent that the material characteristics required by Rule 15Fh-3(b)(1) are included in the documentation of a security-based swap, such as the master agreement, credit support annex, trade confirmation or other documents, we do not believe that any additional burden will be required for the disclosure of material characteristics. For other required disclosures relating to material risks required by Rule 15Fh-3(b)(1) or disclosures relating to material incentives or conflicts of interest required by Rule 15Fh-3(b)(2), we understand that certain market participants have developed standardized disclosures for some of these requirements.¹⁰ For example, many SBS Dealers already provide a statement of potential risks related to investing in certain security-based swaps to their counterparties. However, to the extent that an SBS Entity and counterparty engage in a highly bespoke transaction, the standardized disclosure may not satisfy all of the SBS Entities disclosure requirements. In those cases, the SBS Entity will likely use a combination of standardized disclosures and de novo disclosures to fulfill its obligations under Rules 15Fh-3(b)(1) and (2).

In some cases, such as disclosures about the daily mark for a cleared security-based swap, the SBS Entity is obligated to provide the daily mark upon request. We understand that in the current model of clearing security-based swaps, the security-based swap between the SBS Entity and counterparty is terminated upon novation by the clearing agency. The SBS Entity would no longer have any obligation to provide a daily mark to the original counterparty because a security-based swap no longer exists between them. Therefore, there would not be any ongoing burden on the SBS Entity. Depending on how quickly the security-based swap is cleared, there may not be an initial burden on the SBS Entity either. Unlike the CFTC's rule, Rule 15Fh-3(c)(1) does not require a pre-trade daily mark. So if the security-based swap is cleared before the end of the next day

the following calculation: (3,488 market participants - 20 SBS Entities) = 3,468 counterparties x (1 hour) = 3,468 hours. For purposes of Form 83-I, the annualized burden is 3,468 hours ÷ 3 years = 1,156 hours industry-wide or .33 hours per respondent.

⁹ For disclosures similar to the disclosure of methodologies and assumptions of daily mark, see Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments and Disclosure of Quantitative and Qualitative Information about Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments and Derivative Commodity Instruments, Securities Act Release No. 7386 (Jan. 31, 1997), 62 FR 6044 (Feb. 10, 1997).

¹⁰ See e.g., ISDA General Disclosure Statement for Transactions (August 2015). To the extent that disclosures of material risks and characteristics under Rule 15Fh-3(b)(1) or disclosures of material incentives and conflicts of interest under Rule 15Fh-3(b)(2) are initially provided orally, the additional burden of providing a written version of the disclosure at or before delivery of the trade confirmation pursuant to Rule 15Fh-3(b)(3) will be considered in connection with the overall reporting and recordkeeping burdens of the SBS Entity.

and the clearing results in novation of the original swap, the SBS Entity would not have any daily mark obligations for the cleared swap.

For uncleared security-based swaps, we believe that SBS Entities may need to slightly modify the models used for calculating variation margin to calculate the daily mark. In addition, the SBS Entity will need to provide the counterparty with a description of the methodologies and assumptions used to calculate the daily mark.

Nevertheless, existing accounting standards and other disclosure requirements under the Exchange Act, such as FASB Accounting Standards Codification Topic 820, Fair Value Measurements and Disclosures, or Item 305 of Regulation S-K, require disclosures similar to the description of the methodologies and assumptions of the daily mark. To the extent that the model it uses and methodologies and assumptions are not already prepared, the SBS Entity may need to prepare the initial description of the data sources, methodologies and assumptions. In addition, the SBS Entity will have an ongoing burden of updating the disclosure for any material changes to the data sources, methodologies and assumptions.

We continue to believe that SBS Entities will use internal staff to revise existing disclosures to comply with Rules 15Fh-3(b) and (c), and to assist in preparing language to comply with Rule 15Fh-3(d) regarding the clearing options available for a particular security-based swap. In addition, the requirements of Rule 15Fh-3(d) are not the same as the CFTC requirements to disclose clearing options, so SBS Entities will need to develop new disclosures.

We estimate that in 2014 there were approximately 740,700 security-based swap transactions between an SBS Dealer and a counterparty that is not an SBS Dealer. Of these, we estimate that approximately 428,000 were new or amended trades requiring these disclosures.¹¹ We recognize that the time required to develop an infrastructure to provide these disclosures will vary significantly depending on, among other factors, the complexity and nature of the SBS Entity's security-based swap business, its market risk management activities, its existing disclosure practices, whether the security-based swap is cleared or uncleared and other applicable regulatory requirements. Under the rule, as adopted, SBS Entities could make the required disclosures to their counterparties through standardized documentation, such as a master agreement or other written agreement, if the parties so agree. We recognize that it will likely be necessary to prepare some disclosures that are particular to a transaction to meet all of an SBS Entity's disclosure obligations under Rules 15Fh-3(b), (c) and (d). We also believe that, because the reporting burden will generally require refining or revising an SBS Entity's existing disclosure processes, the disclosures will be prepared internally.

Disclosure – SBS Entities

¹¹ Available DTCC-TIW data for 2014 indicated approximately 740,700 transactions between SBS Entities and non-SBS Entities during that time period. Of these, approximately 240,000 were new trades, and 188,000 were amendments. Of the approximately 240,000 new trades between likely SBS Dealers and non-dealers, only 1,000 trades or approximately 0.5% were voluntarily cleared bilateral trades in 2014.

Given the foregoing, we continue to conservatively estimate that on average, SBS Entities will initially require three persons from trading and structuring, three persons from legal, two persons from operations, and four persons from compliance, for a total of 12 persons spending 100 hours each, to comply with the rules.¹² This team will analyze the changes necessary to comply with the new disclosure requirements, including the redesign of current compliance systems, if necessary, as well as the creation of functional requirements and system specifications for any systems development work that may be needed to automate the disclosure process.¹³ This will amount to an aggregate initial reporting burden of 66,000 hours.¹⁴

Following the initial analysis and development of specifications, we continue to estimate that half of these persons will still be required to spend 20 hours annually to re-evaluate and modify the disclosures and system requirements as necessary, amounting to an ongoing annual reporting burden of 6,600 hours.¹⁵

We also continue to estimate that, to create and maintain an information technology infrastructure to the specifications identified by the team above, each SBS Entity will require, on average, eight full-time persons for six months¹⁶ of systems development programming and testing, amounting to a total initial reporting burden of 440,000 hours.¹⁷

We continue to estimate that maintenance of this system will require two full-time persons for a total ongoing reporting burden of 220,000 hours annually.¹⁸

Disclosure - Security-Based Swap Transactions between an SBS Dealer and a Non-SBS Dealer Counterparty

¹² In the Proposing Release, we used this estimate and it recognizes the development of market practice to comply with very similar CFTC rules. It also recognizes that given the current model used for clearing security-based swaps, daily mark disclosures in that context are unlikely to be required. Furthermore, no comments were received on these estimates. As a result, we conservatively continue to use these estimates.

¹³ Some SBS Entities may choose to utilize in-house counsel to review, revise and prepare these disclosures.

¹⁴ The estimate is based on the following calculation: (55 SBS Entities) x (12 persons) x (100 hours) = 66,000 hours. For purposes of Form 83-I, the annualized burden is 66,000 hours ÷ 3 years = 22,000 hours industry-wide or 400 hours per respondent.

¹⁵ The estimate is based on the following calculation: (55 SBS Entities) x (6 persons) x (20 hours) = 6,600 hours.

¹⁶ On a yearly basis, this would amount to 4 employees at 2,000 hours each (40 hour work week x 50 weeks).

¹⁷ The estimate is based on the following calculation: (55 SBS Entities) x (4 persons) x (2,000 hours) = 440,000 hours. For purposes of Form 83-I, the annualized burden is 440,000 hours ÷ 3 years = 146,666.67 hours industry-wide or 2,666.67 hours per respondent.

¹⁸ The estimate is based on the following calculation: (55 SBS Entities) x (2 persons) x (2,000 hours) = 220,000 hours.

In addition, we estimate that, on average, the SBS Entities will require one burden hour per security-based swap to evaluate whether more particularized disclosures are necessary for the transaction and to develop the additional disclosures. As stated above, we estimate that in 2014 there were approximately 740,700 security-based swap transactions between an SBS Dealer and a counterparty that is not an SBS Dealer. Of these, we estimate that approximately 428,000 were new or amended trades requiring these disclosures. This amounts to an ongoing reporting burden of 428,000 hours.¹⁹

15Fh-3(e) and (f) – Know Your Counterparty and Recommendations: As noted in the Proposing Release, the estimates in this paragraph reflect our experience with and burden estimates for similar collections of information, as well as our discussions with market participants.²⁰

SBS Dealers

We continue to believe that most SBS Dealers already have policies and procedures in place for knowing their counterparties, to comply with existing CFTC and FINRA standards. We estimate that, on average, the rules will require each SBS Dealer to initially spend approximately five hours to review existing policies and procedures and to document the collection of information necessary to comply with its “know your counterparty” obligations – for a total initial burden of 250 hours.²¹

We also continue to estimate that an SBS Dealer will spend an average of approximately 30 additional minutes each year per unique non-SBS Dealer counterparty²² to assess whether the SBS Dealer is in compliance with the rules’ “suitability” requirements – a total ongoing reporting burden of approximately 11,500 hours annually,²³ or an average of 230 hours annually per SBS Dealer.²⁴

Counterparties

¹⁹ The estimate is based on the following calculation: (428,000 security-based swaps that require these disclosures) x (1 hour) = 428,000 hours. We realize that some assessments may take less time and some may take more. In addition, to the extent that additional disclosures are required, drafting the disclosure is likely to take more than an hour, but we expect the vast majority of transactions will not require additional disclosures so that an average of one hour per transaction is a reasonable estimate.

²⁰ See Proposing Release 76 FR at 42398, n. 14.

²¹ The estimate is based on the following calculation: (50 SBS Dealers) x (5 hours) = 250 hours. For purposes of Form 83-I, the annualized burden is 250 hours ÷ 3 years = 83.33 hours industry-wide or 1.67 hours per respondent.

²² Based on 2014 TIW data, there were approximately 23,000 unique transacting SBS Dealer - non-SBS dealer pairs.

²³ The estimate is based on the following calculation: (23,000 transactions with non-SBS Dealer counterparties) x (30 minutes) ÷ (60 minutes) = 11,500 hours.

²⁴ The estimate is based on the following calculation: (11,500 hours) ÷ (50 SBS Dealers) = 230 hours per SBS Dealer. To the extent that the SBS Dealer is unfamiliar with the counterparty, we would expect a greater time burden and as an SBS Dealer becomes more familiar with the particular counterparty, we would expect a lesser time burden. As a result, we use 30 minutes as an average estimate.

In addition, we estimate that the counterparties will require approximately ten hours for each counterparty or its agent to collect and provide essential facts to the SBS Dealer for a total initial reporting burden of 109,000 hours.²⁵

Special Entities

We expect that, given the institutional nature of the participants involved in security-based swaps, most SBS Dealers will obtain the representations in Rule 15Fh-3(f)(2) or Rule 15Fh-3(f)(3)(ii) to comply with Rule 15Fh-3(f).²⁶ For the 1,141 special entities, we expect they will choose compliance with the safe harbor Rule 15Fh-5(b) and accordingly, the burden estimates for the SBS Entities and special entities are included in the context of the discussion for that rule, *infra*.

Existing SBS Market Participants

For the 7,412 security-based swap market participants that are also swap market participants, including the 35 firms that we expect to be dually registered as Swap Dealers and SBS Dealers, the requisite representations have already been drafted for the swaps context.²⁷ We understand that swap market participants are currently utilizing standardized representations that are currently in Schedule 3 of the ISDA August 2012 DF Protocol. To the extent that any modifications are necessary to adapt those representations to the security-based swap context, we conservatively estimate that market participants will each require two hours to assess the necessity and make any necessary modifications for the security-based swap context for an aggregate initial reporting burden of 12,542 hours for the market participants that participate in both the security-based swaps market and the swaps market.²⁸ We do not anticipate any ongoing burden with respect to the requisite representations because the representations in the swaps context are deemed repeated “as of the occurrence of each Swap Communication Event” and we would anticipate a similar construction in the security-based swap context.

New SBS Market Participants

²⁵ The estimate is based on (10,900 market participants) x (10 hours) = 109,000 hours. For purposes of Form 83-I, the annualized burden is 109,000 hours ÷ 3 years = 36,333.33 hours industry-wide or 3.33 hours per respondent.

²⁶ We base the expectation on observation and experience in the context of transactions by broker-dealers with institutional clients and the use of FINRA’s institutional suitability exception in that context.

²⁷ Of the 7,412 market participants that engage in both swaps and security-based swaps, a proportion of them will also be special entities. This calculation assumes all of the special entities are engaged in transactions in both markets, leaving 6,271 market participants (7,412 market participants – 1,141 special entities) to adapt the representations in the ISDA August 2012 DF Protocol to the security-based swap context, as necessary.

²⁸ This calculation is based on the assumption that all of the special entities are engaged in both the swaps market and the security-based swaps market and that the special entities will choose to comply with the safe harbor of Rule 15Fh-5(b). (7,412 market participants – 1,141 special entities) x (2 hours) = 12,542 hours.

For the remaining 3,488 market participants, we expect that they will draft the requisite representations to comply with the institutional suitability analysis in Rule 15Fh-3(f)(2). We also anticipate that these 3,488 market participants are likely to model their representations on the representations included in the ISDA August 2012 DF Protocol because the SBS Entity is already familiar with those particular representations. Accordingly, we estimate that the remaining 3,488 market participants will each require five hours to review and agree to representations similar to those included in such protocol for an aggregate initial reporting burden of 17,440 hours.²⁹ Again, we do not anticipate an ongoing burden for these representations for the reasons set forth above.³⁰

15Fh-3(g) – Fair and Balanced Communications: Rule 15Fh-3(g) requires SBS Entities to communicate with counterparties “in a fair and balanced manner, based on principles of fair dealing and good faith.” The three specific standards of Rule 15Fh-3(g) require that: (1) communications must provide a sound basis for evaluating the facts with respect to any security-based swap or trading strategy involving a security-based swap; (2) communications may not imply that past performance will recur, or make any exaggerated or unwarranted claim, opinion, or forecast; and (3) any statement referring to the potential opportunities or advantages presented by a security-based swap or trading strategy involving a security-based swap shall be balanced by an equally detailed statement of the corresponding risks.³¹ We expect that a discussion of material risks of the transaction will be included in the documentation for the security-based swap. We believe that all 55 SBS Entities will be required to comply with Rule 15Fh-3(g), and that they will likely send their existing marketing materials to outside counsel for review and comment.

We additionally believe that compliance with Rule 15Fh-3(g) would require a review of SBS Entities’ other communications to their counterparties, such as e-mails and Bloomberg messages. However, we believe that such additional communications would likely be reviewed internally, by in-house legal counsel or an SBS Entity’s CCO. We estimate that the initial internal burden hours associated with this review would be approximately six hours, for an aggregate total of 330 hours.³²

²⁹ This estimate is based on the following calculation: (3,488 market participants) x (5 hours) = 17,440 hours. For purposes of Form 83-I, the annualized burden is 17,440 hours ÷ 3 years = 5,813.33 hours industry-wide or 1.67 hours per respondent.

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

³¹ To the extent that the 16 registered broker-dealers that are expected to register as SBS Entities are also FINRA members, they are already subject to these similar FINRA requirements in the non-security based swap context. Cf. FINRA Rule 2210(d)(1)(D) (“Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.”) We believe that this requirement addresses concerns raised by a commenter that to be fair and balanced, communications must inform investors of both the potential rewards and risks of their investments. See letter from Carl Levin, U.S. Senate, dated Aug. 29, 2011.

For more bespoke transactions, the cost for outside counsel to review the marketing materials will depend on the complexity, novelty and nature of the product, but we expect a higher cost associated with the review for more novel products.

Rule 15Fh-3(g) applies to communications made before the parties enter into a security-based swap, and continues to apply over the term of a security-based swap. We believe that the ongoing compliance costs associated with the rule will likely be limited to a review of SBS Entities' e-mail communications sent to counterparties, which we believe will likely be done by in-house counsel. We estimate that the ongoing compliance costs of the rule will be approximately two burden hours, for an aggregate total of 330 hours.³³

- **15Fh-3(h) – Supervision:** As outlined above, Rule 15Fh-3(h) requires an SBS Entity to establish and maintain a system to supervise, and to diligently supervise, its business and the activities of its associated persons. Such a system shall be reasonably designed to prevent violations of the provisions of applicable federal securities laws and the rules and regulations thereunder relating to its business as an SBS Entity. The written policies and procedures required by Rule 15Fh-3(h) must include, at a minimum, procedures for nine specific areas of supervision.

As for the number of SBS Entities respondents, we continue to estimate that approximately 55 SBS Entities (of which we expect approximately 35 will be dually registered with the CFTC as Swap Entities) will be required to comply with analogous supervision rules like those required by Rule 15Fh-3(h).³⁴ The supervision requirements in Rule 15Fh-3(h) are largely the same under the business conduct standards and related rules adopted by the CFTC.³⁵

The estimates in this paragraph reflect the foregoing information, as well as our general experience with and understanding of the burden estimates in similar contexts, including, but not limited to, FINRA's analogous supervision rules. While each of the nine written policies and procedures required, at a minimum, by Rule 15Fh-3(h) will vary in cost, we continue to estimate that such policies and procedures will require, on average, 210 hours per respondent, per policy and procedure to initially prepare written policies and procedures in order to establish a system to diligently supervise those policies and

³² We estimate that the review of additional communications for these three categories of security-based swaps would require internal burden hours for each of the 55 SBS Entities. This estimate also assumes that each SBS Entity engages in all three categories of security-based swaps. For purposes of Form 83-I, the annualized burden is 330 hours ÷ 3 years = 110 hours industry-wide or 2 hours per respondent.

³³ We estimate that the review of additional communications for these three categories of security-based swaps would require two internal burden hours for each of the 55 SBS Entities. This estimate also assumes that each SBS Entity engages in all three categories of security-based swaps.

³⁴ Proposing Release, 76 FR at 42442.

³⁵ See CFTC Rule 23.602. See also CFTC Rule 23.402(a) (policies and procedures to ensure compliance); CFTC Rule 3.3(d)(1) (administration of compliance policies and procedures). Accordingly, the SBS Entities that would also be registered as a swap dealer or major swap participant with the CFTC would have supervision policies and procedures for engaging in swaps.

procedures, or an average of 1,890 burden hours per SBS Entity – resulting in an initial aggregate reporting burden of 103,950 hours.³⁶

We also continue to expect that many SBS Entities will primarily rely on outside counsel for the collection of information required under this rule. Once these policies and procedures are established, we estimate that, on average, each SBS Entity will spend approximately 540 hours (approximately 60 hours per policy and procedure) each year to maintain these policies and procedures, yielding a total ongoing annual burden of approximately 29,700 internal reporting burden hours.³⁷ We believe that the maintenance of these policies and procedures will be conducted internally.

- **15Fh-4 and 15Fh-2(a) – SBS Dealers Acting as Advisors to Special Entities:** As discussed above, Rule 15Fh-4 imposes on SBS Dealers that act as advisors to special entities a duty to make a reasonable determination that any security-based swap or related trading strategy that the SBS Dealer recommends is in the “best interests” of the special entity. Rule 15Fh-2(a) states that an SBS Dealer “acts as an advisor” to a special entity when it recommends a security-based swap or related trading strategy to the special entity. However, the rule provides a safe harbor whereby an SBS Entity will not be deemed an “advisor” if an ERISA special entity counterparty relies on advice from an ERISA fiduciary, or where any special entity counterparty relies on advice from a qualified independent representative that acts in its best interests.³⁸

Among swap dealers operating under the CFTC’s parallel safe harbor,³⁹ parties have generally included representations in standard swap documentation that both counterparties are acting as principals, and that the counterparty is not relying on any communication from the swap dealer as investment advice. We believe that SBS Dealers and their special entity counterparties will similarly include the requisite representations in standard security-based swap documentation. These representations will need to be reviewed and revised to ensure that they comply with the business conduct standards.

SBS Dealers Acting as Advisors to Special Entities

As stated in the Proposing Release, we believe that the 50 SBS Dealers will primarily rely on in-house counsel for compliance with this rule, each of which will need approximately five internal burden hours to draft, review and revise the representations in its standard security-based swap documentation to comply with Rule 15Fh-2(a)(1)-(2),

³⁶ See Proposing Release, 76 FR at 42446. The estimate is based on the following calculation: (210 hours) x (9 policies and procedures) x (55 SBS Entities) = 103,950 hours. For purposes of Form 83-I, the annualized burden is 103,950 hours ÷ 3 years = 34,650 hours industry-wide or 630 hours per respondent. The estimates reflected do not include the burden and cost of actually complying with the underlying substance of these written policies and procedures as that is beyond the scope of the PRA analysis.

³⁷ See Proposing Release, 76 FR at 42446. The estimate is based on the following calculation: (60 hours) x (9 policies and procedures) x (55 SBS Entities) = 29,700 hours.

³⁸ Rule 15Fh-2(a)(1)-(2).

³⁹ See CFTC Regulation § 23.440(b)(1)-(2).

for an initial aggregate reporting burden of 250 hours.⁴⁰ We also believe that, once an SBS Dealer revises the language of the representations to meet the requirements of Rule 15Fh-2(a)(1)-(2), such language will become part of the SBS Dealer's standard security-based swap documentation and, accordingly, there will be no further ongoing burden associated with this rule.

SBS Dealers Acting as Advisors to Special Entities (Unique Pairs)

For transactions in which an SBS Dealer is not a counterparty and chooses to act as an advisor, we estimate that an SBS Entity will require approximately 20 internal burden hours to collect the requisite information from each special entity, for an aggregate initial reporting burden of approximately 1,700 hours.⁴¹

- **15Fh-5 – SBS Dealers Acting as Counterparties to Special Entities:** Where a special entity is a counterparty to a security-based swap, Rule 15Fh-5(a)(1) requires an SBS Entity to have a reasonable basis for believing that the special entity has a qualified independent representative that meets specified requirements. Where the special entity counterparty is an ERISA plan, under Rule 15Fh-5(a)(2), the SBS Entity must have a reasonable basis to believe that the ERISA plan is represented by an ERISA fiduciary. We believe that written representations will likely provide the basis for establishing an SBS Entity's reasonable belief regarding the qualifications of the independent representative.

As stated in the Proposing Release, we believe that the burden for determining whether an independent representative is independent of the SBS Entity will depend on the size of the independent representative, the size of the SBS Entity, and the volume of transactions with which each is engaged. We further believe that each SBS Entity would initially require written representations regarding the qualifications of a special entity's independent representative, but would only require updates to the independent representative's qualifications in subsequent dealings with the same independent representative throughout the duration of the swap term, provided the volume and nature of the security-based swap transaction remain the same.

SBS Dealers Acting as Counterparties to Special Entities (Reporting)

Regarding the initial burden estimates for SBS Entities, our updated estimates reflect that each SBS Entity will interact with and be required to form a reasonable basis regarding

⁴⁰ See Proposing Release, 76 FR at 42446. The estimate is based on the following calculation: (50 SBS Dealers) x (5 hours) = 250 hours. For purposes of Form 83-I, the annualized burden is 250 hours ÷ 3 years = 83.33 hours industry-wide or 1.67 hours per respondent.

⁴¹ This estimate is based on available market data for November 2006 – September 2014 provided by DTCC that indicates 85 unique pairs of SBS Dealers and U.S. special entities without a third-party investment adviser. Based on 2014 single name CDS data in DTCC-TIW, there were 2 unique trading relationships between likely SBS Dealers and special entities without a third party investment adviser, which entered into 272 new trades and 200 terminations, representing 0.039% of all transactions in 2014. The estimate is based on the following calculation: (85 unique SBS Dealers) x (20 hours) = 1,700 hours. For purposes of Form 83-I, the annualized burden is 1,700 hours ÷ 3 years = 566.67 hours industry-wide or 6.67 hours per respondent.

the qualifications of approximately 385 independent, third-party representatives and 25 in-house independent representatives, for a total of 410 independent representatives. In the Proposing Release, we estimated an average internal burden of 15 hours for each SBS Entity per independent representative. We have increased this estimate based on changes to the representations that SBS Entities will have to obtain and now estimate that each SBS Entity, on average, will initially require approximately 15.5 internal burden hours from the SBS Entity's own in-house counsel per independent representative to collect the information necessary to comply with this requirement. This will result in an aggregate initial burden of 349,525 internal hours.⁴² We do not believe there will be any external burdens associated with this rule.

With regard to SBS Entities' ongoing burden, we believe that such burden would be minimal (1 hour for each SBS Entity per independent representative), since, once an SBS Entity forms a reasonable basis to believe that a given independent representative meets the qualifications of Rule 15Fh-5, the SBS Entity will not likely need to reaffirm that independent representative's qualifications anew, but could instead rely on past representations regarding the representative's qualifications.

We estimate that SBS Entities will incur an ongoing, aggregate reporting burden of 22,550 hours per year as a result of this rule.⁴³

SBS Dealers Acting as Counterparties to Special Entities (Third-Party Disclosure)

In addition to the burdens imposed on SBS Entities, Rule 15Fh-5(a)(1) will also impose a burden on special entities' independent representatives to collect the necessary information regarding their relevant qualifications, and provide that information to the SBS Entity and/or the special entity. We continue to believe that the reporting burden for the independent representative will consist of providing written representations to the SBS Entity and/or the special entity it represents. We believe that the burden associated with an independent representative's obligation to assess its independence from the SBS Entity will likely depend on the size of the independent representative, the size of the SBS Entity, the interactions between the independent representative and the SBS Entity, the policies and procedures of the independent representative and depend less on the number of transactions in which the independent representative is engaged. The policies and procedures of the independent representative will facilitate its ability to quickly assess, disclose, manage and mitigate any potential material conflicts of interest. We now believe the number of transactions in which the independent representative engages is less likely to impact this assessment. Accordingly, we have updated our estimates.

⁴² While we do not believe that every SBS Entity is likely to deal with every independent representative, we do not have data on the average number of independent representatives with whom each SBS Entity would deal. Accordingly, for the purposes of these calculations, we have assumed that each SBS Entity will deal with each independent representative. The estimate is based on the following calculation: (15.5 hours) x (410 independent representatives) = 6,355 hours per SBS Entity. (55 SBS Entities) x (6,355 hours) = 349,525 hours.

⁴³ The estimate is based on the following calculation: (1 hour) x (410 independent representatives) = 410 hours per SBS Entity. (55 SBS Entities x 410 hours) = 22,550 hours.

We anticipate that independent representatives will rely on in-house counsel to collect and submit the relevant documentation and information regarding its qualifications. We also estimate that each independent representative, on average, will initially require approximately 16 internal burden hours from its in-house counsel per SBS Entity to collect the information necessary to comply with this requirement.⁴⁴ This will result in an aggregate initial burden of 360,800 internal hours.⁴⁵

As with SBS Entities' ongoing burden associated with this rule, we believe that the ongoing burden imposed on independent representatives would be minimal (1 hour for each SBS Entity per independent representative), since, once the independent representative has provided information regarding its qualifications to the SBS Entity, the independent representative will not likely need to collect or provide that information again, but could instead rely on a bring down certificate that reflects past representations regarding its qualifications. We estimate that independent representatives will incur an ongoing, aggregate burden of 22,550 hours per year as a result of this rule.⁴⁶ We do not believe there will be external burdens associated with this rule.

- **15Fh-6 – Political Contributions:** As noted above, we believe that there will be approximately 50 SBS Dealers subject to these rules, and estimates that all of them will provide, or will seek to provide, security-based swap services to municipal entities. SBS Dealers, in order to supervise and assess internal compliance with the pay to play rules, will need to collect information regarding the political contributions of SBS Dealers and their covered associates. In addition, SBS Dealers' covered associates will also need to collect and provide the information required by these rules to SBS Dealers.

Our estimates in this paragraph take into account the burden of the covered associates and the SBS Dealers. These estimates also reflect our experience with and burden estimates for similar requirements, as well as our discussions with market participants. Based on the foregoing, we estimate that it will take, on average, approximately 185 hours per SBS Dealer – resulting in a total initial reporting burden of 9,250 hours⁴⁷ to

⁴⁴ While we do not believe that every independent representative is likely to deal with every SBS Entity, we do not have data on the average number of SBS Entities with whom each independent representative would deal. Accordingly, for the purposes of these calculations, we have assumed that each SBS Entity will deal with each independent representative.

⁴⁵ The estimate is based on the following calculation: (16 hours) x (410 independent representatives) x (55 SBS Entities) = 360,800 hours.

⁴⁶ The estimate is based on the following calculation: (1 hour) x (410 independent representatives) = 410 hours per SBS Entity. (55 SBS Entities) x (410 hours) = 22,550 hours. We note that, in the Proposing Release, we based our burden estimates for evaluating an independent representative's qualifications on the underlying assumption that representations regarding an independent representative's qualifications must be provided prior to every transaction, and therefore the associated burden calculations were transaction-specific. See Proposing Release, 76 FR 42446-7. However, based on the observed practices of swap market participants, we now believe that representations regarding an independent representative's qualifications need only be provided in the context of each relationship with an SBS Entity. Our revised calculations, which are now relationship-specific, reflect this shift in our underlying assumption.

⁴⁷ The estimate is based on the following calculation: (50 SBS Dealers) x (185 hours) = 9,250 hours. For purposes of Form 83-I, the annualized burden is 9,250 hours ÷ 3 years = 3,083.33 hours

collect the information regarding the political contributions of SBS Dealers and their covered associates to assist SBS Dealer in their compliance with the rule. We believe that many SBS Dealers will primarily rely on in-house counsel for the collection of information required under this rule.

- **15Fk-1 – Chief Compliance Officer:** Under Rule 15Fk-1, an SBS Entity’s CCO is responsible for, among other things, taking reasonable steps to ensure that the SBS Entity establishes and maintains policies and procedures reasonably designed to ensure compliance by the SBS Entity with the Exchange Act and the rules and regulations thereunder relating to its business as an SBS Entity. We continue to estimate that, on average, the establishment and administration of the policies and procedures required under Rule 15Fk-1 (e.g., preparing an annual compliance report and the SBS Entity’s annual assessment of its written policies and procedures reasonably designed to achieve compliance with Section 15F and the rules and regulations thereunder) will require 630 hours to create and 180 hours to administer per year per respondent, for a total reporting burden of 34,650 initial hours⁴⁸, and 9,900 hours per year on average⁴⁹, on an ongoing basis.⁵⁰

A CCO will also be required to prepare and submit annual compliance reports to the Commission and the SBS Entity’s board of directors. In the Proposing Release, we estimated that these reports would require on average 92 hours per respondent per year for an ongoing annual reporting burden of 5,060 hours. As a result of additional descriptions that some CCOs will have to include in their annual compliance reports, we now estimate that these reports will require on average 93 hours per respondent per year, for an ongoing annual reporting burden of 5,115.⁵¹ Because the report will be submitted by an internal CCO, we do not expect any external costs associated therewith.

13. Costs to Respondents

The staff estimates that:

- **15Fh-3(a) – Verification of Status:** As stated above in Section 12, of the 55 SBS Entities, we expect only 20 SBS Entities will each incur an initial burden to adhere to the protocols. In addition, SBS Entities will require counterparties to provide a certificate indicating that there are no changes to the representations included in the protocol and

industry-wide or 61.67 hours per respondent.

⁴⁸ The estimate is based on the following calculation: (55 SBS Entities) x (630 hours) = 34,650 hours. For purposes of Form 83-I, the annualized burden is 34,650 hours ÷ 3 years = 11,550 hours industry-wide or 210 hours per respondent.

⁴⁹ The estimate is based on the following calculation: (55 SBS Entities) x (180 hours) = 9,900 hours.

⁵⁰ See Proposing Release, 76 FR at 42448.

⁵¹ The estimate is based on the following calculation: (93 hours) x (55 SBS Dealers) = 5,115 hours.

that reliance on those representations would be reasonable. The cost for SBS Entities and the counterparties to each comply with this burden is \$500.⁵²

SBS Entities – Adherence Letter

In order to adhere to the protocol, each SBS Entity will submit an adherence letter, the form of which is provided online. As such, we estimate that total industry-wide reporting cost for adhering to the protocol for all SBS Entities will be \$10,000.⁵³ We do not anticipate any ongoing burdens with respect to this rule.

SBS Participants – Adherence Letter

As noted above, we believe that approximately 7,412 of the 10,900 security-based swap market participants (which include SBS Entities and counterparties) are also swap market participants and likely already adhere to the relevant protocol. These 7,412 market participants would not have any start-up burdens or ongoing burdens with respect to verification. The remaining 3,488 market participants would incur \$500 each to adhere to the protocol for an aggregate total of \$1,744,000.⁵⁴

Counterparties – Certificate Regarding Representations

As noted above, of these 10,900 security-based swap market participants, 3,488 market participants would adhere to the protocol. Subtracting the 20 SBS Entities from this number leaves 3,468 counterparties. As such, we estimate that total industry-wide reporting cost for adhering to the protocol for all counterparties will be \$1,734,000.⁵⁵

- **15Fh-3(g) – Fair and Balanced Communications:** As stated above in Section 12, we believe that all 55 SBS Entities will be required to comply with Rule 15Fh-3(g). It is likely that the SBS Entities will send their existing marketing materials to outside counsel for review and comment. Accordingly, we continue to believe that each SBS Entity will likely incur \$6,000 in legal costs, or \$330,000 in the aggregate initial burden, to draft or review statements of potential opportunities and corresponding risks in the

⁵² We anticipate that ISDA will charge a flat fee of \$500 to adhere to the protocol. Although we understand that ISDA offer bulk pricing for multiple entities that are part of the same corporate group or for fund families, we do not have the data as to how many of the 3,488 market participants are related entities that would be able to take advantage of this bulk pricing. As a result, we have conservatively estimated that each of the 3,488 market participants would incur the \$500 fee.

⁵³ The estimate is based on the following calculation: (20 SBS Entities) x (\$500) = \$10,000. For purposes of Form 83-I, the annualized cost is \$10,000 ÷ 3 years = \$3,333.33 or \$166.67 per respondent.

⁵⁴ Although we understand that ISDA offers bulk pricing for multiple entities that are part of the same corporate group or for fund families, we do not have the data as to how many of the 3,488 market participants are related entities that would be able to take advantage of this bulk pricing. As a result, we have conservatively estimated that each of the 3,488 market participants would incur the \$500 fee and the hour for the adherence letter.

⁵⁵ The estimate is based on the following calculation: (3,468 counterparties) x (\$500) = \$1,734,000. For purposes of Form 83-I, the annualized cost is \$1,734,000 ÷ 3 years = \$578,000 or \$166.67 per respondent.

marketing materials for single name and narrow based index credit default swaps, total return swaps and other security-based swaps.⁵⁶

We additionally believe that compliance with Rule 15Fh-3(g) would require a review of SBS Entities' other communications to their counterparties, such as e-mails and Bloomberg messages. However, we believe that such additional communications would likely be reviewed internally, by in-house legal counsel or an SBS Entity's CCO. For more bespoke transactions, however, the cost for outside counsel to review the marketing materials will depend on the complexity, novelty and nature of the product, but we expect a higher cost associated with the review for more novel products. We accordingly estimate an initial, aggregate compliance cost for the marketing materials relating to bespoke single name and narrow based index credit default swaps, total return swaps and other security-based swaps at \$462,000.⁵⁷

- **15Fh-3(h) – Supervision:** As outlined above, Rule 15Fh-3(h) requires an SBS Entity to establish and maintain a system to supervise, and to diligently supervise, its business and the activities of its associated persons. We continue to expect that many SBS Entities will primarily rely on outside counsel for the collection of information required under this rule at a rate of \$400 per hour, for an average of 450 hours per respondent, with a minimum of nine policies and procedures, resulting in an outside initial cost burden of \$180,000 per respondent – or an aggregate initial cost of \$9,900,000.⁵⁸
- **15Fh-6 – Political Contributions:** We believe that there will be approximately 50 SBS Dealers subject to these rules, and estimates that all of them will provide, or will seek to provide, security-based swap services to municipal entities. SBS Dealers, in order to supervise and assess internal compliance with the pay to play rules, will need to collect information regarding the political contributions of SBS Dealers and their covered associates. In addition, SBS Dealers' covered associates will also need to collect and provide the information required by these rules to SBS Dealers.

⁵⁶ We estimate that the review of marketing materials for these three categories of security-based swaps would require 5 hours of outside counsel time, at an average cost of \$400 per hour. This estimate also assumes that each SBS Entity engages in all three categories of security-based swaps. The estimate is based on the following calculation: (5 hours) x (\$400 per hour) x (3 categories) = \$6,000 per SBS Entity. (55 SBS Entities) x (\$6,000) = \$330,000. For purposes of Form 83-I, the annualized cost per respondent is \$330,000 ÷ 3 years = \$110,000 or \$2,000 per respondent.

⁵⁷ We estimate the review of the marketing materials for each of these categories would require seven hours of outside counsel time at a cost of \$400 per hour. This estimate also assumes that each SBS Entity engages in all three categories of transactions. The estimate is based on the following calculation: 7 hours x \$400 per hour x 3 = \$8,400 per SBS Entity. (55 SBS Entities) x (\$8,400) = \$462,000. For purposes of Form 83-I, the annualized cost per respondent is \$462,000 ÷ 3 years = \$154,000 or \$2,800 per respondent.

⁵⁸ Some SBS Entities may choose to utilize in-house counsel to initially prepare these policy and procedure, which would mitigate the aggregate initial cost, but the estimate of \$9,900,000 reflects a conservative assumption of SBS Entities primarily relying on outside counsel to prepare these materials. The estimate is based on the following calculation: (450 hours) x (\$400 per hour) = \$180,000 per SBS Entity. (55 SBS Entities) x (\$180,000) = \$9,900,000. For purposes of Form 83-I, the annualized cost per respondent is \$9,900,000 ÷ 3 years = \$3,300,000 or \$60,000 per respondent.

We expect some SBS Dealers to incur one-time costs to establish or enhance current systems to assist in their compliance with the rule. These costs will vary widely among firms. We have also estimated that some small and medium firms will incur start-up costs, on average, of \$10,000, and larger firms will incur, on average, \$100,000. Assuming all SBS Dealers will be larger firms, the initial cost to establish or enhance current systems to assist in their compliance with the rule is estimated at \$5,000,000 for all SBS Dealers.⁵⁹ Nevertheless, we note that some SBS Dealers may not incur any system costs if they determine a system is unnecessary due to their limited number of employees, or their limited number of municipal entity counterparties. Furthermore, like other large firms, SBS Dealers have likely devoted significant resources to automating compliance and reporting with respect to regulations concerning certain political contributions. This rule could, therefore, cause them to enhance the existing systems that had originally been designed to comply with MSRB Rules G-37 and G-38 and Advisers Act Rule 206(4)-5.

The final rules also allow SBS Dealers to file applications for exemptive relief, and outline a list of items to be addressed, including, whether the SBS Dealer has developed policies and procedures to monitor political contributions; the steps taken after discovery of the contribution; and the apparent intent in making the contribution based on the facts and circumstances of each case. The incidence of exemptive relief related to MSRB Rule G-37 and the number of applications we have received under the Advisers Act Rule 206(4)-5 may be indicative of the possible applications for exemptive relief under these final rules. We also estimate that a firm that applies for an exemption will hire outside counsel to prepare an exemptive request, and estimate that the number of hours counsel will spend preparing and submitting an application between 16 hours to 32 hours, at a rate of \$400 per hour. Recognizing that this is an estimate, we conservatively estimate that we may receive up to two applications for exemptive relief per year with respect to pay to play rules,⁶⁰ at a total ongoing cost of \$25,600 per year, assuming conservatively 32 hours for outside counsel to prepare an exemptive request.⁶¹ This is an ongoing cost for all SBS Dealers.⁶²

- **15Fk-1 – Chief Compliance Officer:** Under Rule 15Fk-1, an SBS Entity’s CCO is responsible for, among other things, taking reasonable steps to ensure that the SBS Entity establishes and maintains policies and procedures reasonably designed to ensure compliance by the SBS Entity with the Exchange Act and the rules and regulations

⁵⁹ The estimate is based on the following calculation: (50 SBS Dealers) x (\$100,000) = \$5,000,000. For purposes of Form 83-I, the annualized cost per respondent is \$5,000,000 ÷ 3 years = \$1,666,666.67 or \$33,333.33 per respondent. See Advisers Act Pay-to-Play Release, 75 FR at 41061 (estimating that larger firms will incur, on average, \$100,000, in start-up costs).

⁶⁰ FINRA has granted 17 exemptive letters related to Rule G-37 between 1/05 and 12/15 (11 years) <http://www.finra.org/industry/exemptive-letters>. In addition, the Commission has received 13 applications under the Adviser’s act (since the compliance date, approximately 4 years).

⁶¹ Ongoing: (Outside counsel at \$400 per hour) x (32 hours per application) x (2 applications) = \$25,600. See Advisers Act Pay-to-Play Release, 75 FR at 41065 (making similar estimates in connection with Advisers Act Rule 206(4)-5).

⁶² The estimate is based on the following calculation: (50 SBS Dealers) x (\$25,600) = \$1,280,000.

thereunder relating to its business as an SBS Entity. We estimate that a total of \$60,000 in outside legal costs will be incurred to, among other things, assist in the preparation of the annual compliance report and the SBS Entity's annual assessment of its written policies and procedures, as a result of this burden per respondent, for a total initial outside cost burden of \$3,300,000.⁶³

⁶³

See id. This figure is the result of an estimated \$400 per hour cost for outside legal services times 150 hours for 3 policies and procedures for 55 respondents. See SDR Registration Release. The estimate is based on the following calculation: (150 hours) x (\$400 per hour) x (3 policies) = \$180,000 per SBS Entity. (55 SBS Entities) x (\$180,000) = \$9,900,000. For purposes of Form 83-I, the annualized cost per respondent is $\$9,900,000 \div 3 \text{ years} = \$3,300,000$ or \$60,000 per respondent.

Summary of Hour and Cost Burdens - 83-1 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 - Adherence Letter (SBS Entities)	Reporting	20	1.00	\$500.00	0	\$0.00	0.33	\$166.67	6.67	\$3,333.33
15Fh-3(a)	Verification of Status - Adherence Letter (SBS Participants)	Reporting	3,488	1.00	\$500.00	0	\$0.00	0.33	\$166.67	1,162.67	\$581,333.33
15Fh-3(a)	Verification of Status - Notice (SBS Entities)	Reporting	55	0.50	\$0.00	0	\$0.00	0.17	\$0.00	9.17	\$0.00
15Fh-3(a)	Verification of Status - Certificate Regarding Representations (Counterparties)	Reporting	3,468	1.00	\$500.00	0	\$0.00	0.33	\$166.67	1,156.00	\$578,000.00
15Fh-3(b), (c), (d)	Disclosures - SBS Entities	Reporting	55	9,200.00	\$0.00	4,120	\$0.00	7,186.67	\$0.00	395,266.67	\$0.00
15Fh-3(b), (c), (d)	Disclosures - SBS Transactions Between SBS Dealer and Non-SBSD Counterparty	Reporting	428,000	0.00	\$0.00	1	\$0.00	1.00	\$0.00	428,000.00	\$0.00
15Fh-3(e), (f)	Know Your Counterparty and Recommendations (SBS Dealers)	Reporting	50	5.00	\$0.00	230	\$0.00	231.67	\$0.00	11,583.33	\$0.00
15Fh-3(e), (f)	Know Your Counterparty and Recommendations (Counterparties)	Reporting	10,900	10.00	\$0.00	0	\$0.00	3.33	\$0.00	36,333.33	\$0.00
15Fh-3(e), (f)	Know Your Counterparty and Recommendations (Existing Market Participants)	Reporting	6,271	2.00	\$0.00	0	\$0.00	0.67	\$0.00	4,180.67	\$0.00
15Fh-3(e), (f)	Know Your Counterparty and Recommendations (New Market Participants)	Reporting	3,488	5.00	\$0.00	0	\$0.00	1.67	\$0.00	5,813.33	\$0.00
15Fh-3(g)	Fair and Balanced Communications	Reporting	55	6.00	\$14,400.00	2	\$0.00	4.00	\$4,800.00	220.00	\$264,000.00
15Fh-3(h)	Supervision	Reporting	55	1,890.00	\$180,000.00	540	\$0.00	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	5.00	\$0.00	0	\$0.00	1.67	\$0.00	83.33	\$0.00
15Fh-2(a) and 15Fh-4	SBS Dealers Acting as Advisors to Special Entities (Unique Pairs)	Reporting	85	20.00	\$0.00	0	\$0.00	6.67	\$0.00	566.67	\$0.00
15Fh-5	SBS Entities Acting as Counterparties to Special Entities	Reporting	55	6,355.00	\$0.00	410	\$0.00	2,528.33	\$0.00	139,058.33	\$0.00
15Fh-5	SBS Entities Acting as Counterparties to Special Entities	Third-Party Disclosure	55	6,560.00	\$0.00	410	\$0.00	2,596.67	\$0.00	142,816.67	\$0.00
15Fh-6	Political Contributions	Reporting	50	185.00	\$100,000.00	0	\$25,600.00	61.67	\$58,933.33	3,083.33	\$2,946,666.67
15Fk-1	Chief Compliance Officer	Reporting	55	630.00	\$180,000.00	273	\$0.00	483.00	\$60,000.00	26,565.00	\$3,300,000.00
	Total									1,260,255.17	\$10,973,333.33

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

As noted in Sections 12 and 13 above, the final rule under 15F(h), increases the burden for respondents by 555,874 hours and \$4,718,666, respectively.

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.