

SUPPORTING STATEMENT

Establishing the Form and Manner with which Security-Based Swap Data Repositories Must Make Security-Based Swap Data Available to the Commission

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 for the Information Collection

On July 21, 2010, the President signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).¹ The Dodd-Frank Act amended the Exchange Act to require the Commission to adopt rules providing for, among other things, the regulation of security-based swap data repositories (“SDRs”).² On February 11, 2015, the Commission adopted Rule 13n-1 to 13n-12 under the Exchange Act (collectively, the “SDR Rules”),³ which govern SDR registration, duties, and core principles.⁴ On the same day, the Commission adopted Rules 900 to 909 under the Exchange Act (collectively, “Regulation SBSR”),⁵ which govern the reporting to registered SDRs of SBS data and public dissemination by registered SDRs of a subset of that data.⁶ In combination, these rules represent a significant step forward in providing a regulatory framework to promote transparency and efficiency in the OTC derivatives markets and assist relevant authorities in performing their market oversight functions.

On December 11, 2015, the Commission proposed to amend the SDR Rules to specify the form and manner with which SDRs would be required to make SBS data available to the Commission.⁷ The proposed rule would require that SBS data made available by SDRs be

¹ The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 11-203, H.R. 4173).

² See 15 U.S.C. 78m(n)(9).

³ 17 CFR 240.13n-1 to 240.13n-11.

⁴ See Securities Exchange Act Release No. 74246 (February 11, 2015), 80 FR 14437 (March 19, 2015) (“SDR Adopting Release”).

⁵ 17 CFR 240.900 to 240.909.

⁶ See Securities Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14563 (March 19, 2015) (“Regulation SBSR Adopting Release”).

⁷ See Securities Exchange Act Release No. 76624 (December 11, 2015), 80 FR 79757 (December 23, 2015) (“SDR Amendments Release”). The proposed amendments will be submitted under OMB number 3235-0719 which relates to the regulation of security-based swap data repositories (“SDRs”). Because these proposed amendments are in addition to the existing SDR rules and do not seek to change the burdens associated with the existing SDR rules as submitted to OMB on March 19, 2015 and approved by OMB on May 14, 2015, the original supporting statement submitted for the regulation of SDRs (3235-0719) will be submitted to OMB along with this supporting statement.

formatted and structured consistently to allow the Commission to accurately analyze data made available by multiple SDRs. Rule 13n-4(b)(5) under the Exchange Act⁸ requires an SDR to provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity). Under Rule 13n-4(a)(5),⁹ “direct electronic access” means “access, which shall be *in a form and manner acceptable to the Commission*, to data stored by a security-based swap data repository in an electronic format and updated at the same time as the security-based swap data repository’s data is updated so as to provide the Commission or any of its designees with the ability to query or analyze the data in the same manner that the security-based swap data repository can query or analyze the data” (emphasis added). The Commission proposes to amend Rule 13n-4(a) to specify the form and manner with which SDRs must provide direct electronic access to the Commission by requiring SDRs to comply with an appropriate schema as will be published on the Commission’s website. The Commission is currently aware of only two industry standards for representing SBS data: FpML (Financial products Markup Language) and FIXML (Financial Information eXchange Markup Language). The Commission is proposing to accommodate both industry standards by specifying that either of two distinct schemas would satisfy the requirements of Rule 13n-4.

2. Purpose of the Information Collection

The SDR Rules are part of the Commission’s overall program of administering the SDR requirements of the Exchange Act. The Commission will use the information collected help ensure an orderly and transparent SBS market as well as provide the Commission with tools to help oversee the market.

3. Role of Improved Information Technology

The SDR Rules are drafted to utilize as much information technology as possible in collecting the information. Specifically, Rule 13n-4(b)(5) requires that an SDR provide the Commission, or any designee of the Commission, with direct electronic access. By designating the use of the two currently available industry standards for representing SBS data, FpML and FIXML, the Commission seeks to accommodate both industry standards, either of which would satisfy the requirements of Rule 13n-4. The Commission preliminarily believes that each schema would facilitate the consistent reporting of SBS transaction characteristics, such as the counterparties, associated other parties, and corresponding terms of payments.

4. Efforts to Identify Duplication

Section 712(a)(2) of the Dodd-Frank Act provides that, before commencing any rulemaking regarding, among other things, security-based swaps or registered SDRs, the Commission must consult and coordinate with the Commodity Futures Trading Commission (“CFTC”) and other prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible. Any person that is required to be registered as an SDR under Exchange Act Section 13(n) must register with the Commission (absent an exemption), regardless of whether

⁸ 17 CFR 240.13n-4(b)(5).

⁹ 17 CFR 240.13n-4(a)(5).

that person is also registered with the CFTC under the Commodities Exchange Act as a swap data repository. The Commission believes that a person that registers with the Commission as an SDR is likely to also register with the CFTC as a swap data repository. As a result, the Commission staff and the CFTC staff have consulted and coordinated with one another regarding their respective Commissions' rules regarding SDRs and swap data repositories. The Commission staff has also consulted and coordinated with other prudential regulators.

5. Effect on Small Entities

Not applicable. The proposed amendments to Rule 13n-4(a) will not have a significant economic impact on a substantial number of small entities.

6. Consequences of Less Frequent Collection

Collecting the information on a less frequent basis would frustrate the ability of the Commission to analyze SBS data and surveil the SBS market.

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

5 CFR 1320.5(d)(2) requires an agency to demonstrate, in its submission for OMB clearance, that the reporting of information more often than quarterly is necessary to satisfy statutory requirements or other substantial need. Sections 763 and 766 of the Dodd-Frank Act amend the Exchange Act to require the Commission to adopt rules providing for, among other things (i) the reporting of security-based swaps to an SDR or to the Commission; and (ii) real-time public dissemination of security-based swap transaction, volume, and pricing information. Although the Dodd-Frank Act did not stipulate how often the reporting of security-based swaps to an SDR or to the Commission must occur, the Dodd-Frank Act did stipulate that real-time public dissemination must occur "as soon as technologically practicable after the time at which the [SBS] transaction has been executed."¹⁰ Rule 13n-4(b)(5) requires an SDR to provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity). The Commission reviewed the time taken to update both FpML and FIXML and estimated that an update requires on average 304 days. While SBS reporting will occur more often than quarterly, the Commission does not believe the amendments to Rule 13n-4(b)(5), by itself, will require reporting more often than quarterly.

8. Consultation Outside the Agency

The Commission has coordinated extensively with the CFTC, other federal financial regulators, as well as various participants in the swaps industry in formulating the proposed amendments. Further, the Commission has incorporated the past experiences of the CFTC regarding their swap data collection efforts, and consulted with both the CFTC and U.S. Department of the Treasury's Office of Financial Research regarding draft technical documentation, including the FIXML and FpML schemas. More generally, as part of the Commission's coordination efforts, Commission staff continue to participate in bilateral and multilateral discussions, task forces, and working groups on data harmonization and the

¹⁰ See Section 763(i) of the Dodd-Frank Act.

regulation of OTC derivatives.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Some information collected by SDRs pursuant to Regulation SBSR will be widely available to the extent it is information that is required to be publicly disseminated by a registered SDR. However, registered SDRs are generally under an obligation to maintain the confidentiality of the other reported information collected pursuant to Regulation SBSR. To the extent that the Commission receives direct electronic access to confidential information pursuant to Regulation SBSR, such information will be kept confidential, subject to the provisions of the Freedom of Information Act.

11. Sensitive Questions

As discussed above in Item 10, the collection of information will not include Personally Identifiable Information (“PII”).¹¹

12. Estimate of Reporting Burden

The total reporting burden for Rule 13n-4(b)(5), as proposed to be amended, for all SDRs is 4725 hours initially and would not create any new annual burden that has not already been accounted for in the previously approved SDR Rules. This burden is further detailed as follows.

The Commission preliminarily believes that registered SDRs are likely to already accept transaction data from reporting persons who submit trade information using FpML and FIXML reporting standards. However, the Commission preliminarily believes that, as a result of the proposed amendment, registered SDRs may incur certain burdens associated with implementing policies, procedures, and information systems to ensure that SBS data made available to the Commission is in a form and manner that satisfies the requirements laid out in the schemas. The Commission preliminarily believes that these incremental burdens are likely to be related to ensuring that the data elements that constitute the common data model are represented using the appropriate FIXML or FpML reporting elements and are likely to be smaller for those SDRs that already employ FIXML or FpML. The Commission preliminarily estimates that each registered SDR will incur an initial, one-time burden of 472.5 hours,¹² for an aggregate one-time burden of

¹¹ 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 The Commission preliminarily estimates that an SDR will assign responsibilities for modifications of information technology systems to an Attorney, a Compliance Manager, a Programmer Analyst and a Senior Business

4,725 hour for all registered SDRs.¹³ The Commission estimated one response per respondent per year, which, including the one-time burden equally allocated over three years, results in a burden of 157.5 hours per response.¹⁴ This collection is a third-party disclosure type of collection.

Once the policies, procedures, and information systems required to comply with the proposed amendment are in place, the Commission preliminarily does not believe that there will be any additional paperwork burden placed upon SDRs to make transaction records accessible in a form and manner that satisfies the requirements of the schemas. The Commission preliminarily believes that the burdens related to SDRs using their policies, procedures, and information systems they would have already established have been accounted for in the previously adopted SDR Rules. Furthermore, the Commission preliminarily believes that the annual burdens associated with maintaining the SDRs policies and procedures, as well as the annual burdens associated with modifications of information technology systems have already been accounted for in the previously approved SDR Rules.

Summary of Hourly Burdens										
		A.	B.	C.	D.	E.	F.	G.		
Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Initial Burden Annualized per Entity per Response	Ongoing Burden per Entity per Response	Annual Burden Per Entity per Response	Total Annual Burden Per Entity	Total Industry Burden	Small Businesses Entities Affected
					[C ÷ 3 years]		[D + E]	[F * B]	[G * A]	[A * 0%]
Policies and Procedures: 13n-4(b)(5)	Third-Party	10	1	472.50	157.50	0.00	157.50	157.50	1,575.00	0.00
TOTAL HOURLY BURDEN FOR ALL RESPONDENTS									1,575.00	

13. Estimate of Total Annual Cost Burden

The Commission preliminarily believes that the proposed amendment will result in a one-time cost of approximately \$2.8 million to update both standards and an annual cost of

Analyst and responsibilities for policies and procedures to an Attorney, a Compliance Manager, a Senior Systems Analyst and an Operations Specialist. The Commission estimates the burden of modifying information technology systems to be as follows: 70 hours (Attorney) + 80 hours (Compliance Manager) + 200 hours (Programmer Analyst) + 70 hours (Senior Business Analyst) = 420 burden hours. The Commission estimates the burden of modifying policies and procedures to be as follows: 21.75 hours (Attorney) + 19.25 (Compliance Manager) + 5.75 hours (Senior Systems Analyst) + 5.75 hours (Operations Specialist) = 52.5 burden hours.

¹³ The aggregate burden is calculated as follows: (420 hours + 52.5 hours) x 10 registered SDRs = 4,725 burden hours

¹⁴ This figure is based on the following: [((472.5 hours/3 years) + (0 hours)) / (1 response per year)] = 157.5 hours.

approximately \$560,000 to update both standards.

At present, FpML and FIXML do not have a complete set of defined reporting elements that address all Regulation SBSR reporting requirements. Market participants may choose to extend these standards to fully reflect Regulation SBSR reporting requirements through the industry bodies that maintain FpML and FIXML.

While the Commission acknowledges the costs of extending and updating these standards, these are indirect costs, in that they are not costs required to be incurred by the proposed amendment, but costs that may be incurred voluntarily by industry bodies. Further, the Commission preliminarily believes that extension costs would be modest. An analysis undertaken by Commission staff suggests that each standard currently has the defined reporting elements required to capture almost all of the data elements contemplated by Regulation SBSR. The Commission also preliminarily believes that the update costs would be limited because any update needed to support possible future changes in Regulation SBSR reporting requirements would likely be implemented as part of the routine updates undertaken by the working groups. To gauge the cost of revising a standard, the Commission reviewed the time taken to update both FpML and FIXML and estimated that an update requires on average 304 days. A working group is estimated to be 29-member strong based on the size of the working group charged with updating FpML to define data elements to be used for reporting OTC derivative positions between market participants and to regulators. We estimate the one-time cost of extending each standard to be \$1,410,560 for a total cost of \$2,821,120 for both standards, while the cost of a periodic update to one standard is estimated to be \$282,112 for a total cost of \$564,224 for both standards.¹⁵ The Commission estimated that the cost per respondent, including the one-time burden equally allocated over three years plus the ongoing burden, results in a cost of \$1,504,597.33.¹⁶ This collection is a third-party disclosure type of collection. The Commission preliminarily believes that, while these costs would be directly incurred by working group members, they would likely be passed through to market participants, potentially in the form of higher transactions costs.

Summary of Dollar Costs									
		A.	B.	C.	D.	E.	F.	G.	

¹⁵ Because members of a working group are professionals from various organizations, we treat each member as an outside professional for this analysis and use a \$400 per hour cost. We assume an eight hour work day for each member of the working group. For the one-time extension of a standard, we assume a workload of 5% of each working group member's work day. Given these assumptions, the cost of extending one standard = 304 x 29 x 8 x 400 x 0.05 = \$1,410,560. The cost of extending both standards is = 1,410,560 x 2 = \$2,821,120. For the periodic update of a standard, we assume a workload of 1% of each working group member's work day due to the incremental and limited nature of a periodic update. Thus, the cost of a periodic update to one standard = 304 x 29 x 8 x 400 x 0.01 = \$282,112, and the cost for both standards is = 282,112 x 2 = \$564,224.

¹⁶ This figure is based on the following: [(((\$2,821,120/3 years) + (\$564,224)) = \$1,504,597.33 per response.

Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Cost per Entity per Response	Initial Cost Annualized per Entity per Response	Ongoing Cost per Entity per Response	Annual Cost Per Entity per Response	Total Annual Cost Per Entity	Total Industry Cost	Small Businesses Entities Affected
					[C ÷ 3 years]		[D + E]	[F * B]	[G * A]	[A * 0%]
Policies and Procedures: 13n-4(b)(5)	Third-Party	10	1	\$2,821,120.00	\$940,373.33	\$564,224.00	\$1,504,597.33	\$1,504,597.33	\$15,045,973.33	0.00
TOTAL COST FOR ALL RESPONDENTS									\$15,045,973.33	

14. Estimate of Cost to the Federal Government

The Commission may incur costs related to the request, receipt, and storage of security-based swap transaction data. The Commission could potentially incur significant costs in analyzing the data. The Commission believes that the proposed amendments could reduce the potential cost to the government by facilitating the Commission's ability to analyze the data. However, at this time, the Commission is unable to quantify these costs.

15. Explanation of Changes in Burden

SDR Rules were adopted in the Regulation SDR Adopting Release. The proposed amendment would increase the burdens previously described in the Regulation SDR Adopting Release.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.