

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for Rule 18a-8**

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**

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) into law.<sup>1</sup> Section 764 of the Dodd-Frank Act added section 15F to the Securities Exchange Act of 1934 (the “Exchange Act”), which provides that the Commission shall adopt rules governing recordkeeping and reporting for security-based swap dealers (“SBSDs”) and major security-based swap participants (“MSBSPs”).<sup>2</sup> More specifically, section 15F(f)(1)(A) provides that SBSDs and MSBSPs shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the SBSD or MSBSP.<sup>3</sup>

Accordingly, on April 17, 2014, the Commission proposed amendments to its recordkeeping and reporting rules for broker-dealers as well as new recordkeeping and reporting rules for SBSDs and MSBSPs (the “SBS Recordkeeping Release”).<sup>4</sup> More specifically, proposed new Exchange Act Rule 18a-8 specifies the circumstances under which stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs must notify the Commission about its financial or operational condition, as well as the form that the notice must take.<sup>5</sup> Proposed Rule 18a-8 is modeled on Exchange Act Rule 17a-11, as proposed to be amended, which applies to broker-dealers, but proposed Rule 18a-8 does not include a parallel requirement for every requirement in Rule 17a-11 because some of the Rule 17a-11 notices relate to calculations that would not be relevant to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.<sup>6</sup>

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<sup>1</sup> See *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, Public Law 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> See 15 U.S.C. 78o-10.

<sup>3</sup> See 15 U.S.C. 78o-10(f)(1)(A).

<sup>4</sup> See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers; Proposed Rules*, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25193 (May 2, 2014).

<sup>5</sup> See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers; Proposed Rules*, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25193 (May 2, 2014).

<sup>6</sup> See, e.g., 17 CFR 240.17a-11(b)(2) and (c)(1).

Proposed Rule 18a-8 would establish a number of new collections of information, as summarized in the table below.<sup>7</sup>

	ANC stand-alone SBSBs	Non-model stand-alone SBSBs	Bank SBSBs	Stand-alone MSBSPs
Net capital below minimum	Rule 18a-8(a)(1)(i)	Rule 18a-8(a)(1)(i)		
Tentative net capital below minimum	Rule 18a-8(a)(1)(ii)			
Tangible net worth below minimum				Rule 18a-8(a)(2)
Early warning of net capital	Rule 18a-8(b)(1)	Rule 18a-8(b)(1)		
Early warning of tentative net capital	Rule 18a-8(b)(2)			
Early warning of tangible net worth				Rule 18a-8(b)(3)
Backtesting exception	Rule 18a-8(b)(4)			
Notice of adjustment of reported capital category			Rule 18a-8(c)	
Failure to make and keep current books and records	Rule 18a-8(d)	Rule 18a-8(d)	Rule 18a-8(d)	Rule 18a-8(d)
Material weakness	Rule 18a-8(e)	Rule 18a-8(e)		
Insufficient liquidity reserves	Rule 18a-8(f)			
Failure to make a required reserve deposit	Rule 18a-8(g)	Rule 18a-8(g)	Rule 18a-8(g)	

## 2. Purpose and Use of the Information Collection

The information obtained under Rule 18a-8 is used to monitor the financial and operational condition of stand-alone SBSBs, stand-alone MSBSPs, bank SBSBs, and bank MSBSPs. This information alerts the Commission of the need to increase surveillance of the firm's financial and operational condition. No similar information is already available to use or modify for purposes of complying with Rule 18a-8 because the disclosures required by the rule are unobtainable until the early warning mechanisms are triggered. Only the most up-to-date information will help the Commission monitor stand-alone SBSBs, stand-alone MSBSPs, bank SBSBs, and bank MSBSPs experiencing financial or operational difficulties.

## 3. Consideration Given to Information Technology

Under paragraph (h) of Rule 18a-8, as currently proposed, firms would be required to give or transmit such notice by facsimile transmission. Reports required by Rule 18a-8 may be transmitted by overnight delivery.

## 4. Duplication

Duplication of information is not a concern because the reporting requirements are only applicable to those stand-alone SBSBs, stand-alone MSBSPs, bank SBSBs, and bank MSBSPs triggering the early warning mechanisms of Rule 18a-8.

<sup>7</sup> See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers; Proposed Rules*, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25193, 25258-59 (May 2, 2014).

## **5. Effect on Small Entities**

Based on feedback from industry participants about the security-based swap market, entities that would qualify as SBSs or MSBSs will likely exceed the thresholds defining “small entities”. Thus, it is unlikely that the requirements under proposed new Rule 18a-8 would have a significant economic impact on a small entity.

## **6. Consequences of Not Conducting Collection**

In the absence of Rule 18a-8, the Commission and, if applicable, the CFTC, might not be promptly alerted to a stand-alone SBS, stand-alone MSBS, bank SBS, or bank MSBS’s financial or operational problems.

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

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

## **8. Consultations Outside the Agency**

The Commission has issued a release soliciting comment on the new “collection of information” requirements and associated paperwork burdens. A copy of the SBS Recordkeeping Release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission’s public website, and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

## **9. Payment or Gift**

No payments or gifts were provided to respondents.

## **10. Confidentiality**

The reports required by Rule 18a-8 are available only to the staff of the Commission and if applicable, the CFTC. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 552, and the Commission’s rules thereunder (17 CFR 200.80(b)(8)), the Commission generally would not publish or make available to any person notices or reports received pursuant to Rule 18a-8. The Commission believes that information obtained under Rule 18a-8 would relate to a condition report prepared for the use of the Commission and other federal governmental authorities responsible for the regulation or supervision of stand-alone SBSs, stand-alone MSBSs, bank SBSs, and bank MSBSs.

## 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”).<sup>8</sup>

## 12. Burden of Information Collection

Proposed Rule 18a–8 would require non-broker-dealer SBSBs and non-broker-dealer MSBSPs to notify the Commission of certain indicia of their financial condition.<sup>9</sup>

The Commission estimates that each Rule 18a-8 notice would take approximately 55 minutes to prepare and file, in contrast to its estimate that a Rule 17a-11 notice would take one hour to prepare and file, because stand-alone SBSBs and stand-alone MSBSPs do not have a DEA with which to file a copy of the Rule 18a-8 notice and bank SBSBs and bank MSBSPs are not required to file the Rule 18a-8 notice with their prudential regulator.

The Commission estimates that it would receive approximately five Rule 18a-8 notices per year, based on the substantially smaller pool of possible respondents, as compared with Rule 17a-11. Therefore, the Commission estimates that Rule 18a-8 would result in an industry-wide annual burden of 4.6 hours per year (including the first year).<sup>10</sup> These burdens are reporting burdens.

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 Business Entities Affected
					[C ÷ 3 years]		[D + E]	[F * B]	[G * A]	[A * 0%]
Rule 18a-8 Notice	Reporting	5	1	0.00	0.00	0.92	0.92	0.92	4.60	0.00
<b>TOTAL HOURLY BURDEN FOR ALL RESPONDENTS</b>									<b>4.60</b>	

<sup>8</sup> The term “Personally Identifiable Information” refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.

<sup>9</sup> See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers; Proposed Rules*, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25193, 25258-59 (May 2, 2014). See also section 1 above.

<sup>10</sup> 55 minutes / 60 minutes = .92 hours per notice x 5 notices per year = 4.6 hours per year.

**13. Costs to Respondents**

The Commission does not anticipate that proposed Rule 18a-8 will impose capital and start-up costs or operation, maintenance, and purchase of services costs.

**14. Costs to Federal Government**

Rule 18a-7 is not expected to result in costs to the federal government due to contracting, information technology, development, hiring one or more new employees, or reallocating existing employees.

**15. Changes in Burden**

Because stand-alone SBSs, stand-alone MSBSs, bank SBSs, and bank MSBSs are currently not regulated by the Commission, the estimated change in burden represents the entire estimated industry-wide burden. More specifically, the annual ongoing burden of 4.6 hours reflects a 4.6 hour increase from the current OMB inventory of 0 hours.

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

Not applicable. The information collection is not used for statistical purposes.

**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 PRA Submissions**

This collection complies with the requirements in 5 CFR 1320.9.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not involve statistical methods.