

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for Rule 18a-9

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.¹ 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 reporting and recordkeeping for security-based swap dealers (“SBSDs”) and major security-based swap participants (“MSBSPs”).²

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”).³ More specifically, proposed new Exchange Act Rule 18a-9, which is modeled on Exchange Act Rule 17a-13, would establish a securities count program for stand-alone SBSDs that would require stand-alone SBSDs to examine and count the securities they physically hold, account for the securities that are subject to their control and direction but are not in their physical possession, verify the locations of securities under certain circumstances, and compare the results of the count and verification with their records.⁴ Stand-alone SBSDs would be required to perform a securities count each quarter, either as of a date certain or on a cyclical basis.⁵ Proposed Rule 18a-9 would not apply to bank SBSDs, bank MSBSPs or stand-alone MSBSPs.⁶

Proposed Rule 18a-9 would require stand-alone SBSDs to note any discrepancies between the count and the firm’s records, and to record in the firm’s record any discrepancies that remain unresolved seven business days after the date of the examination, count, and verification.⁷ Proposed Rule 18a-9 would allow the Commission to exempt any stand-alone SBSBD from the rule if the Commission determines that it is not necessary in the public interest

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

² See 15 U.S.C. 78o-10.

³ 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).

⁴ See *id.*

⁵ See *id.*

⁶ See *id.*

⁷ See proposed Rule 18a-9.

and for the protection of investors to subject the firm to certain or all of the provisions of the rule.⁸

2. Purpose and Use of the Information Collection

The information is used as an inventory control device to monitor a stand-alone SBSD's ability to account for all securities held in transfer, in transit, pledged, loaned, borrowed, deposited, or otherwise subject to the firm's control or direction. Any discrepancies between the security count and the SBSD's records alert the Commission to those firms experiencing back-office operational issues. Without proposed Rule 18a-9, the Commission would lose this important warning device to inform it when a stand-alone SBSD might be having problems accounting for the securities for which it is responsible.

3. Consideration Given to Information Technology

Since proposed Rule 18a-9 provides that firms must reconcile their books and records with their physical inventory and inventory in transit, improved information technology would not reduce the burden.

4. Duplication

No duplication is apparent because stand-alone SBSDs are currently unregulated entities and do not have SROs that require similar counts of securities.

5. Effect on Small Entities

Based on feedback from industry participants about the security-based swap market, entities that would qualify as SBSDs or MSBSPs will likely exceed the thresholds defining "small entities". Thus, it is unlikely that the requirements under proposed new Rule 18a-9 would have a significant economic impact on a small entity.

6. Consequences of Not Conducting Collection

If security counts were conducted less frequently, investors would not have the protection that the federal securities laws require. With regard to broker-dealers, between 1967 and 1970, a number of broker-dealers became insolvent because of their inability to account for the securities that their records showed they possessed or controlled. The Commission believes that the risk of insolvency due to inability to account for securities is similarly applicable to stand-alone SBSDs.

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 See paragraph (d) of proposed Rule 18a-9.

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 records required to be made by proposed Rule 18a-9 are available only to Commission examination staff and state securities authorities. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 522, and the Commission’s rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

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”).⁹

12. Burden of Information Collection

Proposed Rule 18a-9, which is modeled on Rule 17a-13, would require stand-alone SBSDs to establish a securities count program.¹⁰ The Commission estimates that proposed Rule 18a-9 would impose an initial burden of 25 hours per firm. The records required by proposed Rule 18a-9 should already be recorded by the systems implemented under proposed Exchange

⁹ 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.

¹⁰ *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).

Act Rules 18a-5 and 18a-6, and accordingly, the resulting initial burden is largely already accounted for under these rules.

The Commission estimates that proposed Rule 18a-9 would impose an ongoing annual burden of 100 hours per stand-alone SBSB, based on the current approved PRA estimate for Rule 17a-13 which estimates a securities count program imposes an average ongoing cost of 100 hours per year.¹¹

The Commission estimates that there are nine stand-alone SBSBs, resulting in an estimated industry-wide initial burden of 225 hours¹² and an ongoing burden of 900 hours per year.¹³ Over a three year period, the total industry burden would be 2,925 hours,¹⁴ or 975 hours per year when annualized.¹⁵ These burdens are recordkeeping 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%] |
| Securities Count Program | Recordkeeping | 9 | 1 | 25.00 | 8.33 | 100.00 | 108.33 | 108.33 | 975.00 | 0.00 |
| TOTAL HOURLY BURDEN FOR ALL RESPONDENTS | | | | | | | | | 975.00 | |

13. Costs to Respondents

The Commission does not anticipate that proposed Rule 18a-9 will impose capital and start-up costs or operation, maintenance, and purchase of services costs.

14. Costs to Federal Government

Rule 18a-9 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.

¹¹ See Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-13* (Feb. 26, 2014), available at <http://www.reginfo.gov/public/do/DownloadDocument?objectID=43812501>.

¹² 9 stand-alone SBSBs x 25 hours = 225 hours per year.

¹³ 9 stand-alone SBSBs x 100 hours = 900 hours per year.

¹⁴ (225 hours + 900 hours in first year) + 900 hours in second year + 900 hours in third year = 2,925 hours.

¹⁵ 2,925 hours / 3 years = 975 hours per year.

15. Changes in Burden

Because stand-alone SBSs are currently not regulated by the Commission, the estimated change in burden represents the entire estimated industry-wide burden. More specifically, the estimated industry-wide initial burden of 225 hours reflects a 225 hour increase from the current OMB inventory of 0 hours, and the estimated industry-wide annual ongoing burden of 900 hours reflects a 900 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.