

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for Exchange Act
Rule 3a71-6: Substituted Compliance for Foreign Security-Based Swap Entities

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

Various requirements contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Title VII”) apply to cross-border security based swap transactions. There accordingly is a potential that, in a market as global as the security-based swap market, market participants who engage in cross-border security-based swap activity could be subject to conflicting or duplicative compliance obligations across multiple jurisdictions, including obligations in connection with the business conduct requirements that the Commission has adopted in Exchange Act rules 15Fh-1 to 15Fh-6, and 15Fk-1. The Commission accordingly has developed a policy and procedural framework under which the Commission will consider permitting compliance with comparable regulatory requirements in a foreign jurisdiction to substitute for compliance with certain Title VII requirements relating to security-based swaps (i.e., “substituted compliance”).

On April 13, 2016, the Commission adopted new rules under the Securities Exchange Act of 1934 (“Exchange Act”) that are intended to implement provisions of Title VII relating to business conduct standards and the designation of a chief compliance officer for security-based swap dealers and major security-based swap participants and also address the cross-border application of the rules and the availability of substituted compliance.¹ Rule 3a71-6, as adopted, provides that the Commission may, conditionally or unconditionally, by order, make a determination with respect to a foreign financial regulatory system that compliance with specified requirements under such foreign financial regulatory system by a registered non-U.S. security-based swap dealer or non-U.S. major security-based swap participant (collectively “SBS Entities), or class thereof, may satisfy certain business conduct requirements by complying with the comparable foreign requirements. The availability of substituted compliance would be predicated on a determination by the Commission that the relevant foreign requirements are comparable to the requirements that otherwise would be applicable, taking into account the scope

¹ See *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, Exchange Act Release No. 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).

The Commission subsequently amended Rule 3a71-6 to also provide for the possibility of substituted compliance in connection with trade acknowledgement and verification requirements. See Exchange Act Release No. 78011 (Jun. 8, 2016), 81 FR 39808 (Jun. 17, 2016).

and objectives of the relevant foreign requirements, and the effectiveness of supervision and enforcement under the foreign regulatory regime. The availability of substituted compliance further would be predicated on there being a supervisory and enforcement MOU or other arrangement between the Commission and the relevant foreign authority addressing supervisory and enforcement cooperation and other matters arising under the substituted compliance determination.

Requests for substituted compliance may come from parties or groups of parties that may rely on substituted compliance, or from foreign financial authorities supervising such parties or their security-based swap activities. Under the final rule, the Commission would make any determinations with regard to the applicable business conduct requirements, rather than on a firm-by-firm basis. Once the Commission has made a substituted compliance determination, other similarly situated market participants would be able to rely on that determination to the extent applicable and subject to any corresponding conditions. Accordingly, the Commission expects that requests for a substituted compliance determination would be made only where an entity seeks to rely on particular requirements of a foreign jurisdiction that has not previously been the subject of a substituted compliance request. The Commission believes that this approach would substantially reduce the burden associated with requesting substituted compliance determinations for an entity that relies on a previously issued determination, and, therefore, complying with the Commission's rules and regulations more generally.

As provided by Exchange Act Rule 0-13, which the Commission adopted in 2014, applications for substituted compliance determinations in connection with these requirements must be accompanied by supporting documentation necessary for the Commission to make the determination, including information regarding applicable requirements established by the foreign financial regulatory authority or authorities, as well as the methods used by the foreign financial regulatory authority or authorities to monitor and enforce compliance with such rules, and to cite to and discuss applicable precedent. Rule 0-13 also specifies other prerequisites for the filing of substituted compliance applications (*e.g.*, requirements regarding the use of English, the use of electronic or paper requests, contact information, and public notice and comment in connection with complete applications).

2. Purpose and Use of the Information Collection

The Commission would use the information collected pursuant to Exchange Act Rule 3a71-6, as adopted, to evaluate requests for substituted compliance with respect to the business conduct requirements applicable to security-based swap entities. The requests for substituted compliance determinations are required when a person seeks a substituted compliance determination. Consistent with Exchange Act Rule 0-13(h), the Commission will publish in the *Federal Register* a notice that a complete application has been submitted, and provide the public the opportunity to submit to the Commission any information that relates to the Commission action requested in the application, subject to requests for confidential treatment being submitted pursuant to any applicable provisions governing confidentiality under the Exchange Act.

3. Consideration Given to Information Technology

Exchange Act rule 0-13 provides that applications for a substituted compliance determination may be submitted in paper format or electronically. Applications submitted electronically must be submitted to the electronic mailbox described on the Commission's Web site. The rule permits electronic submission of applications in order to reduce the burden on applicants and streamline the submission process, while also permitting submission of paper applications to give applicants flexibility in their form of submission.

4. Duplication

Rule 3a71-6 does not duplicate any existing regulatory requirements. There are no other rules governing substituted compliance for foreign security-based swap dealers.

5. Effect on Small Entities

Not applicable. None of the respondents subject to the information collection will be a small entity.

6. Consequences of Not Conducting Collection

The information collection under Rule 3a71-6 is designed to enable the Commission to permit compliance with comparable regulatory requirements in a foreign jurisdiction to substitute for compliance with certain Title VII requirements relating to security-based swaps, and thereby mitigate the threat that a market participant who engages in cross-border security-based swap transactions could be subject to conflicting or duplicative compliance obligations across multiple jurisdictions. If the information collection under Rule 3a71-6 is not completed with respect to a given foreign jurisdiction, the Commission may be unable to make a substituted compliance determination with respect such foreign jurisdiction.

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 required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

9. Payment or Gift

Not applicable.

10. Confidentiality

The Commission intends to make public the information submitted to it pursuant to any request for a substituted compliance determination under Rule 3a71-6, including supporting documentation provided by the requesting party, though requestors may seek confidential treatment of their applications to the extent permitted under Commission rules. If confidential treatment is granted, such information would be kept confidential, subject to the provisions of applicable law (*e.g.*, Exchange Act sections 24(d) and 24(f)(2)).

11. Sensitive Questions

The collection of information contained in Rule 3a71-6 may include Personally Identifiable Information (“PII”)² in that applicants submitting substituted compliance requests to the Commission pursuant to 3a71-6 are required to follow the procedures set forth in Rule 0-13. Specifically, Rule 0-13(e) states that “[e]very application (electronic or paper) must contain the name, address, telephone number, and email address of each applicant and the name, address, telephone number, and email address of a person to whom any questions regarding the application should be directed.” This information collection does not include social security numbers.

Further, Commission staff does not expect to be able to search and retrieve a substituted compliance request using PII. As such, we believe that the treatment of any PII provided with the collection of information associated with this rule is not likely to implicate the Federal Information Security Management Act of 2002 or the Privacy Act of 1974.

12. Burden of Information Collection

A request for a substituted compliance determination under Rule 3a71-6 may come from a registered foreign SBS Entity (or a group of such entities), or from foreign regulatory authorities. The Commission will make any determinations with respect to particular requirements on a class or jurisdiction basis, depending on the specific characteristics of the foreign regulatory regime, rather than on a firm-by-firm basis. Once the Commission has made an affirmative substituted compliance determination with respect to a particular jurisdiction, other similarly situated foreign SBS Entities within such jurisdiction would be able to rely on that determination to the extent applicable and subject to any corresponding conditions. Similarly, if the Commission makes a determination to reject a request for a substituted

² 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.

compliance determination with respect to a particular jurisdiction, such determination would apply to other similarly situated entities within such jurisdiction. Therefore, a registered foreign entity would not be required to make a request with respect to rules and regulations of a foreign jurisdiction that have previously been the subject of a substituted compliance determination.

Based on the analysis of recent data, the Commission staff expects that there may be approximately 22 non-U.S. entities that potentially may register as security-based swap dealers, out of approximately 50 total entities that may register as security-based swap dealers. Potentially, all such non-U.S. security-based swap dealers, or some subset thereof, may seek to rely on substituted compliance in connection with the applicable requirements.³ It is likely that the majority of such requests will be made in the two years preceding the compliance date for security-based swap dealer registration.

In practice, the Commission expects that the greater portion of any such substituted compliance requests will be submitted by foreign financial authorities, given their expertise in connection with the relevant substantive requirements, and in connection with their supervisory and enforcement oversight with regard to security-based swap dealers and their activities. For purposes of this assessment, the Commission estimates that three such SBS Entities will submit substituted compliance applications.

The Commission staff estimates that the one-time reporting burden associated with making each substituted compliance request by SBS Entities pursuant to Rule 3a71-6 would occur in the first year and be approximately 80 hours of in-house counsel time. Thus, the Commission staff estimates that the aggregate burden associated with preparing and submitting requests for a substituted compliance determination pursuant to Rule 3a71-6 would be approximately 240⁴ hours across all applicable respondents. Based on these calculations, the annualized three year estimate is 26.67⁵ hours per respondent on an annual basis and the three-year estimate of the hourly burden across all respondents is 80 hours.⁶

These total burdens include all collection burdens associated with Rule 3a71-6, including burdens associated with analyzing and comparing the regulatory requirements of the foreign jurisdiction with the business conduct requirements in Section 15F of the Exchange Act and the

³ Consistent with prior estimates, the Commission staff further believes that there may be zero to five major security-based swap participants. It is possible that some subset of those entities will be non-U.S. major security-based swap participants that will seek to rely on substituted compliance in connection with the business conduct requirements.

⁴ 3 (estimated number of requests for substituted compliance determinations by SBS Entities pursuant to Rule 3a71-6) * 80 hours = 240 hours.

⁵ (First year: 80 hours; second year: 0 hours; third year: 0 hours) ÷ 3 years = 26.67 hours per respondent.

⁶ 26.67 hours per respondent * 3 respondents = 80 hours.

rules and regulations thereunder.

Collection of Information	Type of Burden	Total Number of Respondents	Total Number of Responses Per Year	Type of Burden	Initial Burden Per Response Per Year Per Respondent	Ongoing Burden Per Response Per Year Per Respondent	Total Annualized Burden Per Year Per Respondent	Total Reporting Burden For All Respondents	Small Business Entities Affected
Substituted compliance requests by SBS Entities	Reporting	3	1	Initial	26.67	0.00	26.67	80	0

13. Costs to Respondents

The Commission believes that a registered SBS Entity (or a group of such entities) requesting a substituted compliance determination will seek outside legal services in the preparation of such requests. For PRA purposes, the Commission assumes that three such entities would seek outside legal services for the first year only and would, on average, consult with outside counsel for 200 hours, which would cost \$252,000 across all applicable respondents.⁷ The Commission also assumes that none of the three respondents would seek outside legal services for year two or year three. The total labor cost per respondent would be approximately \$84,000,⁸ or approximately \$28,000⁹ when annualized over three years. Thus, the cost over the three-year period would be \$252,000¹⁰ or \$84,000¹¹ per year when annualized over three years.

⁷ In initially adopting Rule 3a71-6 in 2016, the Commission used the following burden estimate: 3 (estimated number of entities that would seek outside counsel to help request a substituted compliance determination) × 200 hours (average estimated time spent by outside counsel to help request a substituted compliance determination) × \$400 (hourly rate for an outside attorney) = \$240,000. The hourly cost estimate of \$400 was based on Commission staff conversations with law firms that regularly assist regulated financial firms with compliance matters.

The present estimate increases those prior estimates by five percent to account for inflation, resulting in a total of \$252,000 in the aggregate and \$84,000 per firm.

⁸ \$252,000 (total labor cost to seek outside counsel, over three years) ÷ 3 (estimated number of entities that would seek outside counsel to help request a substituted compliance determination) = \$84,000.

⁹ \$84,000 (cost per respondent, over three years) ÷ 3 years = \$28,000.

¹⁰ \$84,000 per respondent * 3 respondents = \$252,000.

¹¹ \$252,000 (cost over three years) ÷ 3 years = \$84,000.

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Substituted compliance requests by SBS Entities	Reporting	3	1	Initial	\$28,000	0.00	\$28,000	\$84,000	0

14. Cost to Federal Government

Not applicable. The Commission does not anticipate any contracting, IT, or development costs, and does not anticipate hiring new employees in connection with the information collection.

15. Changes in Burden

As discussed above, the estimates of costs have increased from \$80,000 to \$84,000 per firm, and from \$240,000 to \$252,000 in the aggregate – to account for inflation, based on a five percent increase over that time.

16. Information Collection Planned for Statistical Purposes

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

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to omit the 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.