**SUPPORTING STATEMENT for the Paperwork Reduction Act Information Collection Submission for Rule 18a-3 – Non-cleared security-based swap margin requirements for security-based swap dealers and major security-based swap participants for which there is not a prudential regulator.**
**3235-0702**[1]

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 June 21, 2019, in accordance with Section 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"),[2] which added section 15F to the Securities Exchange Act of 1934 (the "Exchange Act"),[3] the Securities and Exchange Commission (the "Commission") adopted Rule 18a-3 to established minimum margin requirements for nonbank security-based swap dealers ("SBSDs") and nonbank major security-based swap participants ("MSBSPs") for non-cleared security-based swaps.[4] The rule establishes a new collection of information requirement with respect to nonbank SBSDs.

Specifically, under paragraph (e) of Rule 18a-3, as adopted, nonbank SBSDs will be required to monitor the risk of each account and establish, maintain, and document procedures and guidelines for monitoring the risk of accounts as part of its risk management control system required under Rule 15c3-4. In addition, the rule requires nonbank SBSDs to review, in accordance with written procedures and at reasonable periodic intervals, its non-cleared security-based swap activities for consistency with such risk monitoring procedures and guidelines. Nonbank SBSDs are also required to determine whether information and data necessary to apply the risk monitoring procedures and guidelines are accessible on a timely basis and whether information systems are available to adequately capture, monitor, analyze, and report relevant data and information. Finally, the rule requires that the monitoring procedures and guidelines must include, at a minimum, procedures and guidelines for:

- Obtaining and reviewing account documentation and financial information necessary for assessing the amount of current and potential future exposure to a given counterparty permitted by the SBSD;

- Determining, approving, and periodically reviewing credit limits for each counterparty, and across all counterparties;

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1 Note that, following the supporting statement for Rule 18a-3, as adopted, there is a supporting statement for Rule 18a-10, as adopted. Rule 18a-10 was not a rule that was proposed in connection with the proposing release of the rules described herein, but followed from comments received in connection with the rules. The supporting statement for Rule 18a-10 shares the same OMB number as Rule 18a-3. For more information, see Section 8 (Consultations Outside the Agency) in the supporting statement for Rule 18a-10, below.

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

3 *See* 15 U.S.C. 78o-10(e)(2)(B).

4 *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, Exchange Act Release No. 86175.

- Monitoring credit risk exposure to the SBSD from non-cleared security-based swaps, including the type, scope, and frequency of reporting to senior management;

- Using stress tests to monitor potential future exposure to a single counterparty and across all counterparties over a specified range of possible market movements over a specified time period;

- Managing the impact of credit exposure related to non-cleared security-based swaps on the SBSD's overall risk exposure;

- Determining the need to collect collateral from a particular counterparty, including whether that determination was based upon the creditworthiness of the counterparty and/or the risk of the specific non-cleared security-based swap contracts with the counterparty;

- Monitoring the credit exposure resulting from concentrated positions with a single counterparty and across all counterparties, and during periods of extreme volatility; and

- Maintaining sufficient equity in the account of each counterparty to protect against the largest individual potential future exposure of a non-cleared security-based swap carried in the account of the counterparty as measured by computing the largest maximum possible loss that could result from the exposure.

In addition, the final rule provides that a nonbank SBSD seeking approval to use a model to calculate initial margin will be subject to an application process consistent with Rule 15c3-1e and paragraph (d) of Rule 18a-1, as applicable, governing the use of internal models to compute net capital. The nonbank SBSD will need to submit sufficient information to allow the Commission to make a determination regarding the performance of nonbank SBSD's initial margin methodology.

**2. Purpose and Use of the Information Collection**

Information collection under Rule 18a-3, as adopted is integral to the Commission's financial responsibility program for nonbank SBSDs. The program is designed to ensure that nonbank SBSDs effectively manage counterparty risk by monitoring their financial exposures to non-cleared security-based swap counterparties. These information collections will facilitate the collection of adequate levels of margin assets by nonbank SBSDs so as to protect them against counterparty default on both current and potential future exposures.

Under Rule 18a-3, as adopted, a nonbank SBSD is required to establish and implement risk monitoring procedures with respect to counterparty accounts. The purpose of the rule is to limit risks to individual firms and systemic risk arising from non-cleared security-based swaps. Firms' records relating to the collection of collateral required by Rule 18a-3, as adopted, assist examiners in evaluating whether SBSDs are in compliance with requirements in the rule.

**3. Consideration Given to Information Technology**

The information collections will not require that respondents use any specific information technology system either to prepare or submit information collections under Rule 18a-3.

**4. Duplication**

This information collection does not duplicate any existing information collection.

### 5. Effect on Small Entities

The information collections required under Rule 18a-3 would not place burdens on small entities. The nonbank SBSDs subject to the information collections under the rule are not expected to be small entities.

### 6. Consequences of Not Conducting Collection

If the required information collections are not conducted or are conducted less frequently, the protection afforded to counterparties and the U.S. financial system would be diminished.

### 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 requested comment on the collection of information requirements in the proposing release in October 2012.[5] In addition, in 2018, the Commission reopened the comment period and requested additional comment on the proposed rules and amendments (including potential modifications to proposed rule language).[6] While the Commission did not receive specific comments with respect to the proposed collection of information with respect to Rule 18a-3, as proposed to be adopted, the Commission received a number of comment letters in response to the 2012 proposal.[7] In response to comments received regarding Rule 18a-3, as proposed to be adopted, the Commission has modified the language in the final rule, as discussed below. These comments and their impact on PRA estimates are discussed below.

### 9. Payment or Gift

No payment or gift is provided to respondents.

### 10. Confidentiality

The information collected by the Commission under Rule 18a-3, as adopted, is kept confidential to the extent permitted by the Freedom of Information Act (5 U.S.C. § 552 *et seq.).*

### 11. Sensitive Questions

No questions of a sensitive nature are asked. The information collection does not collect

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5 *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70213, 70299 (Nov. 23, 2012).

6 *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, Exchange Act Release No. 84409 (Oct. 11, 2018), 83 FR 53007 (Oct. 19, 2018) ("Capital, Margin, and Segregation Comment Reopening").

7 Comments *available at* https://www.sec.gov/comments/s7-08-12/s70812.shtml.

any Personally Identifiable Information ("PII").[8] At the same time, however, Commission staff understands that there may be instances when certain information (including, but not limited to, a person's name, email, or phone number) could be provided by a respondent in response to one of the collections of information. However, Commission staff does not envision any circumstances in which a social security number would be provided pursuant to any of the collections of information. As such, we believe that the treatment of any PII 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**

Counterparty Risk Monitoring Procedures (Rule 18a-3(e))

The Commission staff estimates that there would be 22 nonbank SBSDs[9] that would each spend an average of 210 hours establishing and documenting their Rule 18a-3 counterparty risk monitoring procedures, for a one-time industry-wide hour burden of 4,620 recordkeeping hours.[10] The staff further estimates that each nonbank SBSD would spend an average of 60 hours per year reviewing risks associated with its counterparties, for an annual industry-wide hours burden of 1,320 recordkeeping hours.[11] **Taken together, the annualized hour burden for the total industry is 2,860 hours.**[12]

Initial Margin Model (Rule 18a-3(d))

Based on comments received,[13] the Commission modified the language in the final rule to

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8 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.

9 While Rule 18a-3 contains requirements that apply to both nonbank SBSDs and MSBSPs, the particular requirement that constitutes a collection of information relates only to subpart (e) of the rule, which requires only nonbank SBSDs to establish and follow risk monitoring procedures in respect of individual security-based swap customer agreements. Because this individual account requirement does not apply to MSBSPs, they are not included as respondents in the calculation of the associated burden. Further, the number of nonbank SBSDs subject to Rule 18a-3 has been reduced from 25, as proposed, to 22, to account for the 3 stand-alone SBSDs that the Commission estimates will elect the alternative compliance mechanism under Rule 18a-10, as adopted. The adoption of Rule 18a-10 will enable stand-alone SBSDs to elect an alternative compliance mechanism and comply with the relevant requirements of the Commodity Exchange Act and the U.S. Commodity Futures Trading Commission's ("CFTC") rules in lieu of Rule 18a-3, as adopted.

10 22 nonbank SBSDs x 210 hours = 4,620 hours. These amounts are annualized over three years resulting in 70 (210 hours/3 years) hours per nonbank SBSD per year and an industry wide annual burden of 1,540 recordkeeping hours.

11 22 nonbank SBSDs x 60 hours = 1,320 hours.

12 1,540 hours + 1,320 hours = 2,860.

13 The Commission received comments to more closely align the final rules with the margin rules of the CFTC and the prudential regulators. *See, e.g.*, Center for Capital Markets Competitiveness, Chamber of Commerce 11/19/2018 Letter; Letter from Scott O'Malia, Chief Executive Officer, International Swaps and Derivatives Association (Nov. 19, 2018). These modifications to more closely align the final rules included an option for a stand-alone SBSD to use a model to calculate initial margin for equity security-based swaps subject to certain conditions. The Commission believes permitting the model-based approach under these limited

provide that a nonbank SBSD may use a model to calculate initial margin, if the use of the model has been approved by the Commission. The final rule provides that a nonbank SBSD seeking approval to use a margin model will be subject to an application process and ongoing conditions in Rule 15c3-1e and paragraph (d) of Rule 18a-1 governing the use of internal models to compute net capital. A nonbank SBSD seeking approval to use a margin model will need to submit sufficient information to allow the Commission to make a determination regarding the performance of the nonbank SBSD's margin methodology. Based on staff experience, the Commission estimates it will take a nonbank SBSD approximately 50 hours to prepare and submit an application to the Commission to seek authorization to use an internal model to calculate initial margin. Based on observations regarding the implementation by market participants of final swap margin rules adopted by other domestic regulators, the Commission believes it is likely that all 22 nonbank SBSDs will seek Commission approval to use an internal model to calculate initial margin resulting in a total industry-wide one-time hour burden of 1,100 hours.[14] The Commission also estimates that each nonbank SBSD will spend approximately 250 hours per year reviewing, updating, and backtesting their initial margin model, resulting in a total industry-wide annual hour burden of 5,500 recordkeeping hours.[15] **In total, the Commission estimates an annualized hourly burden of 5,866.67 hours.**[16]

| Summary of Hourly Burdens | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 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 |
| Rule 18a-3(e) (Counterparty Risk Monitoring Procedures) | Recordkeeping | 22 | 1 | 210.00 | 70.00 | 60.00 | 130.00 | 130.00 | 2,860.00 | 0 |
| Rule 18a-3(d) (Initial Margin Model) | Recordkeeping | 22 | 1 | 50.00 | 16.67 | 250.00 | 266.67 | 266.67 | 5,866.74 | 0 |
| | | | | | | | | TOTAL HOURLY BURDEN FOR ALL RESPONDENTS | 8,726.74 | |

## 13. Costs to Respondents

The 22 respondents subject to the collection of information may incur start-up costs in

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circumstances strikes an appropriate balance in terms of addressing commenters' concerns and maintaining regulatory parity between the cash equity market and the equity security-based swap market. Permitting the use of models for the purpose described above will further harmonize the Commission's margin rule with the rules of domestic and foreign regulators and, therefore, minimize potential competitive impacts of imposing different requirements.

14 22 nonbank SBSDs x 50 hours = 1,100 hours. These amounts are annualized over three years resulting in 16.67 (50 hours/3 years) hours per nonbank SBSD per year and an industry wide annual burden of 366.67 recordkeeping hours. One or two nonbank SBSDs may choose to use standardized haircuts to compute initial margin because it may be too costly for these firms to use an initial margin model. However, the Commission is conservatively estimating that all 22 nonbank SBSDs will choose to use a model to compute initial margin for purposes of this collection of information.

15 22 nonbank SBSDs x 250 hours = 5,500 hours.

16 (1,100 hours / 3 years) + 5,500 hours = 5,866.67 hours.

order to comply with this collection of information. These costs may vary depending on the size and complexity of the nonbank SBSD. In addition, the start-up costs may be less for the 16 nonbank SBSD respondents also registered as broker-dealers because these firms may already be subject to similar requirements with respect to other margin rules. For the remaining 6 nonbank SBSDs,[17] because these written procedures may be novel undertakings for these firms, the Commission staff assumes these nonbank SBSDs will have their written risk analysis methodology reviewed by outside counsel. Therefore, the staff estimates that these 6 nonbank SBSDs and will engage an outside counsel to review their written risk analysis methodology, at a rate of $400 per hour for 5 hours (i.e., $2,000 in legal costs). **This will result in a one-time industry-wide external recordkeeping cost of $12,000, or $4,000[18] annualized over 3 years.**

| Summary of Dollar Costs | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 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 Business Entities Affected |
| Rule 18a-3 (Cost Burden) | Recordkeeping | 6 | 1 | $2,000.00 | $666.67 | 0 | $666.67 | $666.67 | $4,000.02 | 0 |
| | | | | | | | | TOTAL COST FOR ALL RESPONDENTS | $4,000.02 | |

## 14. Cost to Federal Government

The staff does not anticipate this information collection to impose additional costs to the Federal Government.

## 15. Changes in Burden

| Name of Information Collection | Annual Industry Burden | Annual Industry Burden Previously Reviewed | Change in Burden | Reason for Change |
|---|---|---|---|---|
| Rule 18a-3(e) (Counterparty Risk Monitoring Procedures) | 2,860 | 3250 | (390) | Reduction in the number of entities impacted due to the adoption of a new rule (Rule 18a-10) in the SBSD Adopting Release. |

17 Recall that this number has been reduced by 3 to account for the estimated 3 stand-alone SBSDs that will elect to account for the adoption of Rule 18a-10, which will enable stand-alone SBSDs to elect an alternative compliance mechanism and comply with the relevant requirements under the Commodity Exchange Act and the CFTC's rules.

18 6 nonbanks SBSDs x $400/hour x 5 hours= $4,000. This amount annualized is $666.67 per nonbank SBSD ($4,000/6 nonbank SBSDs = $666.666, rounded to $666.67).

| | | | | |
|---|---|---|---|---|
| Rule 18a-3(d) (Initial Margin Model) | 5,866.74 | 0 | 5,866.74 | New provision adopted in the amendments to Rule 15c3-1 described in the SBSD Adopting Release, based on comments received. |
| Rule 18a-3 (Cost Burden) | $4,000.02 | $6,000.03 | ($2,000.01) | Reduction in the number of entities impacted due to the adoption of a new rule (Rule 18a-10) in the SBSD Adopting Release. |

### 16. Information Collected 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 Paperwork Reduction Act 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.

**SUPPORTING STATEMENT for the Paperwork Reduction Act Information Collection Submission for Rule 18a-10 – Alternative compliance mechanism for security-based swap dealers that are registered as swap dealers and have limited security-based swap activities. 3235-0702**

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 *et seq.*

## B. JUSTIFICATION

### 1. Necessity of Information Collection

On June 21, 2019, in accordance with Section 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"),[19] which added section 15F to the Securities Exchange Act of 1934 (the "Exchange Act"),[20] the Securities and Exchange Commission (the "Commission") adopted Rule 18a-10 to provide an alternative compliance mechanism pursuant to which a stand-alone security-based swap dealers ("SBSDs")[21] that is registered as a swap dealer and predominantly engages in a swaps business may elect to comply with the capital, margin, and segregation requirements of the Commodity Exchange Act ("CEA") and the U.S. Commodity Futures Trading Commission's ("CFTC") rules in lieu of complying with Rules 18a-1, 18a-3, and 18a-4, as adopted.[22]

In order to qualify to operate pursuant to Rule 18a-10, the stand-alone SBSD cannot be registered as a broker-dealer or an OTC derivatives dealer. Moreover, in addition to other conditions, the aggregate gross notional amount of the firm's security-based swap positions must not exceed the lesser of a maximum fixed-dollar amount or 10% of the combined aggregate gross notional amount of the firm's security-based swap and swap positions. The maximum fixed-dollar amount is set at a transitional level of $250 billion for the first 3 years after the compliance date of the rule and then drops to $50 billion thereafter unless the Commission issues an order: (1) maintaining the $250 billion maximum fixed-dollar amount for an additional period of time or indefinitely; or (2) lowering the maximum fixed-dollar amount to an amount between $250 billion and $50 billion. The final rule further provides that the Commission will consider the levels of security-based swap activity of the stand-alone SBSDs operating under the alternative compliance mechanism and provide notice before issuing such an order.

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

20 *See* 15 U.S.C. 78o-10(e)(2)(B).

21 The alternative compliance mechanism in Rule 18a-10, as adopted, is not available to nonbank SBSDs that are registered as either a broker-dealer or an OTC derivatives dealer. Consequently, term "stand-alone SBSD," in the context of discussing the alternative compliance mechanism, refers to a stand-alone SBSD that is not also registered as an OTC derivatives dealer.

22 *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, Exchange Act Release No. 86175.

Rule 18a-10, as adopted, addresses how a firm would elect to operate pursuant to the rule. Under paragraph (d)(1), a firm can make the election as part of the process of applying to register as an SBSD. In this case, the firm must provide written notice to the Commission and the CFTC during the registration process of its intent to operate pursuant to the rule. Upon being registered as an SBSD, the firm can begin complying with Rule 18a-10, provided it meets the conditions described in the rule. Under paragraph (d)(2) of Rule 18a-10, an SBSD can make the election after the firm has been registered as an SBSD. In this case, the firm must provide written notice to the Commission and the CFTC of its intent to operate pursuant to the rule and continue to comply with Rules 18a-1, 18a-3, and 18a-4 for two months after the end of the month in which the firm provides the notice or for a shorter period of time as granted by the Commission by order subject to any conditions imposed by the Commission. The requirement that the firm continue complying with the Commission's rules for a period of time after making the election is designed to provide the Commission and the CFTC with an opportunity to examine the firm before it begins operating pursuant to the alternative compliance mechanism and to prepare for the firm no longer complying with the Commission's rules.

In addition, Rule 18a-10 requires the firm to provide a written disclosure to its counterparties after it begins operating pursuant to the rule. The disclosure must be provided before the first transaction with the counterparty after the firm begins operating pursuant to the rule. The disclosure must notify the counterparty that the firm is complying with the applicable capital, margin, and segregation requirements of the CEA and the CFTC's rules in lieu of complying with Rules 18a-1, 18a-3, and 18a-4. The disclosure requirement is designed to alert the counterparty that the firm is not complying with these Commission rules notwithstanding the fact that the firm is registered with the Commission as an SBSD. This will provide the counterparty with the opportunity to assess the implications of transacting with the SBSD under these circumstances.

Furthermore, Rule 18a-10 requires the firm to immediately notify the Commission and the CFTC in writing if it fails to meet a condition in the rule. This notice – by immediately alerting the Commission and the CFTC of the firm's status – will provide the agencies with the opportunity to promptly evaluate the situation and coordinate any regulatory responses such as increased monitoring of the firm.

The Commission believes stand-alone SBSDs that meet the conditions of Rule 18a-10 should be permitted to adhere to capital, margin, and segregation requirements of the CEA and the CFTC's rules (which, potentially, could include a bank-like capital standard) because, among other reasons, they will be predominantly engaging in a swaps business and, therefore, the CFTC will have a heightened regulatory interest in these firms as compared to the Commission's regulatory interest. Consequently, a firm that is subject to Rule 18a-10 must comply with applicable capital, margin, and segregation requirements of the CEA and the CFTC's rules and a failure to comply with one or more of those rules will constitute a failure to comply with Rule 18a-10. The rule establishes a new collection of information requirement with respect to stand-alone SBSDs.

## 2. Purpose and Use of the Information Collection

Information collection under Rule 18a-10, as adopted is integral to the Commission's financial responsibility program for certain stand-alone SBSDs. The disclosure requirement under Rule 18a-10, as adopted, is designed to alert the counterparty that the firm is not complying with these Commission rules notwithstanding the fact that the firm is registered with the Commission as an SBSD. This will provide the counterparty with the opportunity to assess the implications of transacting with the SBSD under these circumstances.

Rule 18a-10 will also require a notification of the Commission if the SBSD chooses the alternative compliance mechanism described in the rule. The Commission believes stand-alone SBSDs that meet the conditions of Rule 18a-10 should be permitted to adhere to capital, margin, and segregation requirements of the CEA and the CFTC's rules (which, potentially, could include a bank-like capital standard) because, among other reasons, they will be predominantly engaging in a swaps business and, therefore, the CFTC will have a heightened regulatory interest in these firms as compared to the Commission's regulatory interest.

## 3. Consideration Given to Information Technology

The information collections will not require that respondents use any specific information technology system either to prepare or submit information collections under Rule 18a-10.

## 4. Duplication

This information collection does not duplicate any existing information collection.

## 5. Effect on Small Entities

The information collections required under Rule 18a-10 would not place burdens on small entities. The stand-alone SBSDs subject to the information collections under the rule are not expected to be small entities.

## 6. Consequences of Not Conducting Collection

If the required information collections are not conducted or are conducted less frequently, the protection afforded to counterparties and the U.S. financial system would be diminished.

## 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 requested comment on the collection of information requirements to

related rules (Rule 18a-1, 18a-3, and 18a-4) in the proposing release in October 2012.[23] In addition, in 2018, the Commission reopened the comment period and requested additional comment on the proposed related rules (Rule 18a-1, 18a-3, and 18a-4) and amendments (including potential modifications to proposed rule language).[24] While the Commission did not receive specific comments with respect to the proposed collection of information with respect to these rules, as proposed to be adopted, the Commission received a number of comment letters in response to the 2012 proposal. [25]

The Commission did not propose a collection of information with respect to Rule 18a-10, because the Commission did not propose Rule 18a-10, as adopted.[26] In response to comments urging the Commission to harmonize requirements with the CFTC,[27] as well as specific comments requesting that the Commission defer to the CFTC's rules if a nonbank SBSD is registered as a swap dealer and conducts only a limited amount of security-based swaps

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23 *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70213, 70299 (Nov. 23, 2012).

24 *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, Exchange Act Release No. 84409 (Oct. 11, 2018), 83 FR 53007 (Oct. 19, 2018) ("Capital, Margin, and Segregation Comment Reopening").

25 Comments *available at* https://www.sec.gov/comments/s7-08-12/s70812.shtml.

26 The Commission did, however, request comment on harmonization in the proposing release. *See, e.g.*, *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, 77 FR at 70217 ("The Commission staff consulted with the prudential regulators and the CFTC in drafting the proposals discussed in this release. In addition, the proposals of the prudential regulators and the CFTC were considered in developing the Commission's proposed capital, margin, and segregation requirements for SBSDs and MSBSPs. The Commission's proposals differ in some respects from proposals of the prudential regulators and the CFTC, and such differences are described below in connection with the relevant proposals. While some differences are based on differences in the activities of securities firms, banks, and commodities firms, or differences in the products at issue, other differences may reflect an alternative approach to balancing the relevant policy choices and considerations. Where these differences exist, comment is sought on the advantages and disadvantages of each proposal and whether a given proposal is appropriate based on differences in the business models of the types of entities that would be subject to the respective proposal, the risks of these entities, and any other factors commenters believe relevant."); *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, 77 FR at 70264 ("However, comment is sought below in section II.B.3. of this release on the question of whether to define the term *eligible collateral* in a manner that is similar to the proposals of the prudential regulators and the CFTC.").

27 Commenters sought harmonization with respect to the Commission's capital requirements, margin requirements, and segregation requirements. *See, e.g.*, Letter from Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel Securities (Nov. 19, 2018); Letter from Richard M. Whiting, Executive Director and General Counsel, The Financial Services Roundtable (Feb. 22, 2013); Letter from Walt L. Lukken, President and Chief Executive Officer, Futures Industry Association (Nov. 19, 2018); Letter from Sebastian Crapanzano and Soo-Mi Lee, Managing Directors, Morgan Stanley (Nov. 19, 2018); Letter from Stuart J. Kaswell, Executive Vice President, Managing Director, and General Counsel, Managed Funds Association (Feb. 22, 2013); Letter from Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association (Nov. 19, 2018); Letter from Adam Jacobs, Director of Markets Regulation, Alternative Investment Management Association (Feb. 22, 2013); Letter from Scott O'Malia, Chief Executive Officer, International Swaps and Derivatives Association (Nov. 19, 2018).

business,[28] the Commission is adopting new Rule 18a-10. These comments and their impact on PRA estimates are discussed below.

**9. Payment or Gift**

No payment or gift is provided to respondents.

**10. Confidentiality**

The information collected by the Commission under Rule 18a-10, as adopted, is kept confidential to the extent permitted by the Freedom of Information Act (5 U.S.C. § 552 *et seq.).*

**11. Sensitive Questions**

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection collects basic Personally Identifiable Information (PII)[29] that may include name, work address, telephone number and email address, but information is not retrieved by a personal identifier. The Commission has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. As such, we believe that the treatment of any PII 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**

In response to comments urging the Commission to harmonize requirements with the

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[28] For example, one commenter stated that "[i]f the Commission and CFTC do not harmonize their capital rules, they should defer to the capital rules of one another in the case of" an entity that is registered as an SBSD and a swap dealer and "whose swaps or [security based swaps] represent a de minimis portion of the [entity's] combined swap and [security-based swap] business. *See* Letter from Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association (Nov. 19, 2018). This commenter further stated that "[i]n cases where the firm is predominantly engaged in swap activity, imposing different capital requirements would be inefficient." *Id.* Another commenter stated that "[i]f harmonization is not achievable, the rules should be coordinated so that [the Commission] defers to the capital and margin rules of the CFTC for an SBSD that is not a broker-dealer and whose [security-based swaps] constitute a very small proportion of its business (e.g., less than 10% of the notional amount of its outstanding combined swap and SBS positions)." *See* Adam Hopkins, Managing Director, Legal Department, Mizuho Capital Markets LLC, Marcy S. Cohen, General Counsel and Managing Director, ING Capital Markets LLC, and Michael Baudo, President and CEO, ING Capital Markets LLC (Nov. 16, 2018). *See also* Letter from Tom Quaadman, Executive Vice President, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce (Nov. 19, 2018). This commenter supported a safe harbor that would allow firms to rely on their compliance with the rules of the Commission or the CFTC to satisfy comparable requirements set by the other agency.

[29] 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.

CFTC,[30] as well as specific comments requesting that the Commission defer to the CFTC's rules if a nonbank SBSD is registered as a swap dealer and conducts only a limited amount of security-based swaps business,[31] the Commission is adopting new Rule 18a-10. Rule 18a-10 contains an alternative compliance mechanism pursuant to which a stand-alone SBSD that is registered as a swap dealer and predominantly engages in a swaps business may elect to comply with the capital, margin, and segregation requirements of the CEA and the CFTC's rules in lieu of complying with Rules 18a-1, 18a-3, and 18a-4.

The Commission estimates that 3 stand-alone SBSDs will elect to operate under Rule 18a-10. These respondents were included in the proposing release in other collections of information (Rule 18a-1 and Rule 18a-3, as proposed), and have been moved to the information collection for new Rule 18a-10.

Develop Disclosure Language (Rule 18a-10(b)(2))

The Commission estimates paperwork burden associated with developing new disclosure language under paragraph (b)(2) of Rule 18a-10 will require each of the 3 stand-alone SBSDs to spend 5 hours of in-house counsel time. **This would create a total one-time industry burden of 15 hours, or 5 hours on an annualized basis.**[32] This estimate assumes little or no reliance on

30 Commenters sought harmonization with respect to the Commission's capital requirements, margin requirements, and segregation requirements. *See, e.g.*, Letter from Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel Securities (Nov. 19, 2018); Letter from Richard M. Whiting, Executive Director and General Counsel, The Financial Services Roundtable (Feb. 22, 2013); Letter from Walt L. Lukken, President and Chief Executive Officer, Futures Industry Association (Nov. 19, 2018); Letter from Sebastian Crapanzano and Soo-Mi Lee, Managing Directors, Morgan Stanley (Nov. 19, 2018); Letter from Stuart J. Kaswell, Executive Vice President, Managing Director, and General Counsel, Managed Funds Association (Feb. 22, 2013); Letter from Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association (Nov. 19, 2018); Letter from Adam Jacobs, Director of Markets Regulation, Alternative Investment Management Association (Feb. 22, 2013); Letter from Scott O'Malia, Chief Executive Officer, International Swaps and Derivatives Association (Nov. 19, 2018).

31 For example, one commenter stated that "[i]f the Commission and CFTC do not harmonize their capital rules, they should defer to the capital rules of one another in the case of" an entity that is registered as an SBSD and a swap dealer and "whose swaps or [security based swaps] represent a de minimis portion of the [entity's] combined swap and [security-based swap] business. *See* Letter from Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association (Nov. 19, 2018). This commenter further stated that "[i]n cases where the firm is predominantly engaged in swap activity, imposing different capital requirements would be inefficient." *Id.* Another commenter stated that "[i]f harmonization is not achievable, the rules should be coordinated so that [the Commission] defers to the capital and margin rules of the CFTC for an SBSD that is not a broker-dealer and whose [security-based swaps] constitute a very small proportion of its business (e.g., less than 10% of the notional amount of its outstanding combined swap and SBS positions)." *See* Adam Hopkins, Managing Director, Legal Department, Mizuho Capital Markets LLC, Marcy S. Cohen, General Counsel and Managing Director, ING Capital Markets LLC, and Michael Baudo, President and CEO, ING Capital Markets LLC (Nov. 16, 2018). *See also* Letter from Tom Quaadman, Executive Vice President, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce (Nov. 19, 2018). This commenter supported a safe harbor that would allow firms to rely on their compliance with the rules of the Commission or the CFTC to satisfy comparable requirements set by the other agency.

32 3 stand-alone SBSDs x 5 in-house counsel hours = 15 hours. Annualized, the hour burden would be 5 hours industry-wide (15 hours/3 years = 5 hours) and 1.67 per stand-alone SBSD (5 hours/3 stand-alone

standardized disclosure language.

Incorporate Disclosure Language (Rule 18a-10(b)(2))

Based on previous experience, the Commission staff estimates that the average SBSD will have approximately 1,000 counterparties at any given time and that the cost of incorporating new disclosure language into the trading documentation of an average SBSD would require 10 hours of in-house counsel time, for a total of 10,000 hours per stand-alone SBSD and **approximately 30,000 hours for all 3 stand-alone SBSDs, or 10,000 hours[33] on an annualized basis.**[34]

Update Disclosures (Rule 18a-10(b)(2))

The Commission expects that the majority of the paperwork burden associated with the new disclosure requirements under paragraph (b)(2) of Rule 18a-10, as adopted, will be experienced during the first year as language is developed. After the new disclosure language is developed and incorporated into trading documentation, the Commission believes that the ongoing burden associated with paragraph (b)(2) of Rule 18a-10 will be limited to periodically updating the disclosures. **The Commission estimates that this ongoing paperwork burden will not exceed 5 hours per stand-alone SBSD, for a total of 15 hours annually for all 3 stand-alone SBSDs.**[35]

Notices (Rule 18a-10(b)(3))

Based on the number of notices currently filed by broker-dealers, the Commission staff estimates that the notice requirement of paragraph (b)(3) of Rule 18a-10 will result in annual hour burdens to stand-alone SBSDs. The Commission staff estimates that 1 stand-alone SBSD will file notice annually with the Commission. In addition, based on the estimates for similar collections of information, **the Commission staff estimates that it will take a stand-alone SBSD approximately a half hour to file this notice, resulting in an industry-wide annual hour burden of a half hour, which rounds up to 1 hour.**[36]

Alternative Compliance Mechanism (Rule 18a-10(d)(1) and (d)(2))

Finally, under paragraphs (d)(1) and (d)(2) of Rule 18a-10, respectively, a stand-alone SBSD can make an election to operate under the alternative compliance mechanism, during the registration process or after the firm registers as an SBSD, by providing written notice to the Commission and the CFTC of its intent to operate pursuant to the rule. The Commission believes

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SBSDS = 1.67).

33 This number (10,000) is different from the number that is represented in the summary of hourly burden chart (9,990) because of a different order of operations and rounding in arriving at the final hour burden.

34 3 stand-alone SBSDs x 10 hours x 1,000 counterparties = 30,000. Annualized, this hour burden would be 10,000 hours industry wide (30,000 hours/3 years = 10,000 hours) and 3,333.33 hours per stand-alone SBSD (10,000 hours/3 stand-alone SBSD = 3,333 hours).

35 3 stand-alone SBSDs x 5 hours = 15 hours.

36 1 stand-alone SBSD x 1 notice x 30 minutes = 30 minutes.

that in the first 3 years of the effective date of the rule that the 3 nonbank SBSDs that elect to operate under Rule 18a-10 will file the notice as part of their application process. Therefore, the Commission believes that the time it would take an entity to file a notice as part of the application process would be *de minimis* and, therefore, would not result in an hour burden for this collection of information or any collection of information associated with registering with the Commission as an SBSD. Further, since the Commission believes that the 3 nonbank SBSDs will elect to operate under the rule as part of their registration process, the Commission believes that there will be no respondents, and no paperwork hour or cost burden under the PRA associated with paragraph (d)(2) of Rule 18a-10, as adopted.

| Summary of Hourly Burdens | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **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** |
| Rule 18a-10(b)(2) (Develop Disclosure Language) | Third-Party | 3 | 1 | 5 | 1.67 | 0 | 1.67 | 1.67 | 5.01 | 0 |
| Rule 18a-10(b)(2) (Incorporate Disclosure Language) | Third Party | 3 | 1,000 | 10 | 3.333 | 0 | 3.333 | 3,333 | 10,000 | 0 |
| Rule 18a-10(b)(2) (Update Disclosures) | Third Party | 3 | 1 | 0 | 0 | 5 | 5 | 5 | 15 | 0 |
| Rule 18a-10(b)(3) (Notices) | Reporting | 1 | 1 | 0 | 0 | .5 | .5 | .5 | .5 (rounds to 1) | 0 |
| | | | | | | | **TOTAL HOURLY BURDEN FOR ALL RESPONDENTS** | | **10,021.01** | |

## 13. Costs to Respondents

The Commission does not expect any cost burdens associated with Rule 18a-10, as adopted.

## 14. Cost to Federal Government

The staff does not anticipate this information collection to impose additional costs to the Federal Government.

## 15. Changes in Burden

All information collections in this supporting statement are new. The Commission did not propose a collection of information with respect to Rule 18a-10, because the Commission did not propose Rule 18a-10.[37] In response to comments urging the Commission to harmonize

[37] The Commission did, however, request comment on harmonization in the proposing release. *See, e.g.*, *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, 77 FR at 70217 ("The Commission staff consulted with the prudential regulators and the CFTC in drafting the proposals discussed in this release. In addition, the proposals of the prudential regulators and the CFTC were considered in developing the Commission's proposed capital, margin, and segregation requirements for

requirements with the CFTC,[38] as well as specific comments requesting that the Commission defer to the CFTC's rules if a nonbank SBSD is registered as a swap dealer and conducts only a limited amount of security-based swaps business,[39] the Commission is adopting new Rule 18a-10.

| Name of Information Collection | Annual Industry Burden | Annual Industry Burden Previously Reviewed | Change in Burden | Reason for Change |
|---|---|---|---|---|

SBSDs and MSBSPs. The Commission's proposals differ in some respects from proposals of the prudential regulators and the CFTC, and such differences are described below in connection with the relevant proposals. While some differences are based on differences in the activities of securities firms, banks, and commodities firms, or differences in the products at issue, other differences may reflect an alternative approach to balancing the relevant policy choices and considerations. Where these differences exist, comment is sought on the advantages and disadvantages of each proposal and whether a given proposal is appropriate based on differences in the business models of the types of entities that would be subject to the respective proposal, the risks of these entities, and any other factors commenters believe relevant."); *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, 77 FR at 70264 ("However, comment is sought below in section II.B.3. of this release on the question of whether to define the term *eligible collateral* in a manner that is similar to the proposals of the prudential regulators and the CFTC.").

38 Commenters sought harmonization with respect to the Commission's capital requirements, margin requirements, and segregation requirements. *See, e.g.*, Letter from Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel Securities (Nov. 19, 2018); Letter from Richard M. Whiting, Executive Director and General Counsel, The Financial Services Roundtable (Feb. 22, 2013); Letter from Walt L. Lukken, President and Chief Executive Officer, Futures Industry Association (Nov. 19, 2018); Letter from Sebastian Crapanzano and Soo-Mi Lee, Managing Directors, Morgan Stanley (Nov. 19, 2018); Letter from Stuart J. Kaswell, Executive Vice President, Managing Director, and General Counsel, Managed Funds Association (Feb. 22, 2013); Letter from Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association (Nov. 19, 2018); Letter from Adam Jacobs, Director of Markets Regulation, Alternative Investment Management Association (Feb. 22, 2013); Letter from Scott O'Malia, Chief Executive Officer, International Swaps and Derivatives Association (Nov. 19, 2018).

39 For example, one commenter stated that "[i]f the Commission and CFTC do not harmonize their capital rules, they should defer to the capital rules of one another in the case of" an entity that is registered as an SBSD and a swap dealer and "whose swaps or [security based swaps] represent a de minimis portion of the [entity's] combined swap and [security-based swap] business. *See* Letter from Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association (Nov. 19, 2018). This commenter further stated that "[i]n cases where the firm is predominantly engaged in swap activity, imposing different capital requirements would be inefficient." *Id.* Another commenter stated that "[i]f harmonization is not achievable, the rules should be coordinated so that [the Commission] defers to the capital and margin rules of the CFTC for an SBSD that is not a broker-dealer and whose [security-based swaps] constitute a very small proportion of its business (e.g., less than 10% of the notional amount of its outstanding combined swap and SBS positions)." *See* Adam Hopkins, Managing Director, Legal Department, Mizuho Capital Markets LLC, Marcy S. Cohen, General Counsel and Managing Director, ING Capital Markets LLC, and Michael Baudo, President and CEO, ING Capital Markets LLC (Nov. 16, 2018). *See also* Letter from Tom Quaadman, Executive Vice President, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce (Nov. 19, 2018). This commenter supported a safe harbor that would allow firms to rely on their compliance with the rules of the Commission or the CFTC to satisfy comparable requirements set by the other agency.

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|---|---|---|---|---|
| Rule 18a-10(b)(2) (Develop Disclosure Language) | 5.01 | n/a | 5.01 | Rule 18a-10 was not previously proposed, but was adopted based on comments received on related rules proposed by the Commission. |
| Rule 18a-10(b)(2) (Update Disclosure Language) | 10,000 | n/a | 10,000 | Rule 18a-10 was not previously proposed, but was adopted based on comments received on related rules proposed by the Commission. |
| Rule 18a-10(b)(2) (Update Disclosures) | 15 | n/a | 15 | Rule 18a-10 was not previously proposed, but was adopted based on comments received on related rules proposed by the Commission. |
| Rule 18a-10(b)(3) (Notices) | .5 | n/a | .5 | Rule 18a-10 was not previously proposed, but was adopted based on comments received on related rules proposed by the Commission. |

### 16. Information Collected 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 Paperwork Reduction Act 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.