

**SUPPORTING STATEMENT**  
**For the Paperwork Reduction Act Information Collection Submission for the Rule 3a71-3**  
**Security-Based Swap Dealer De Minimis Counting Exception for Certain Transactions**  
**Arranged, Negotiated or Executed in the United States**

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**

Rule 3a71-3 under the Securities Exchange Act of 1934 (“Exchange Act”) currently provides in part that, for purposes of determining whether they can avail themselves of the de minimis exception to the “security-based swap dealer” definition, non-U.S. persons must count certain dealing transactions with non-U.S. counterparties that have been “arranged, negotiated, or executed” by personnel in the United States.

The Commission is proposing Rule 3a71-3(d)<sup>1</sup> to provide an exception from that “arranged, negotiated, or executed” counting requirement. There would be collections of information associated with the following proposed conditions to the exception, all of which are intended to help protect the policy goals associated with security-based swap dealer regulation:

- A condition requiring a registered entity<sup>2</sup> affiliated with the non-U.S. person relying on the exception to disclose the limited applicability of Title VII in connection with the transactions at issue.
- A condition requiring the registered entity to comply with the following types of security-based swap dealer requirements “as if” it were a counterparty to the transactions at issue: (i) certain business conduct requirements; (ii) trade acknowledgment and verification requirements; and (iii) portfolio reconciliation requirements in connection with the initial reconciliation.
- A condition requiring the registered entity to obtain from its non-U.S. affiliate, and maintain, trading relationship documentation regarding the non-U.S. affiliate and its counterparty.
- A condition requiring the registered entity to obtain from its non-U.S. affiliate, and maintain, consent to service of process.
- A condition requiring the non-U.S. person relying on the exception to be subject to the margin and capital requirements of a “listed jurisdiction” designated by the Commission.<sup>3</sup>

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<sup>1</sup> See Exchange Act Release No. 85823 (May 10, 2019), 84 FR 24206 (May 24, 2019).

<sup>2</sup> Depending on the alternative to the exception that is adopted, that entity may be registered either as a security-based swap dealer or as a broker.

<sup>3</sup> Because the proposed amendment to Rule 3a71-3 would require the use of a registered security-based swap dealer or a registered broker in connection with the transactions at issue, the proposed amendment also would implicate collections of information associated with security-based swap dealer or broker status (apart from the collections associated with the specific conditions of the

## 2. Purpose and Use of Information Collection

Disclosure of limited Title VII applicability. The proposed condition requiring disclosure of this information is intended to help guard against the non-U.S. counterparties to the transactions at issue reasonably presuming that the involvement of U.S. personnel in an arranging, negotiating or executing capacity as part of the transaction would be accompanied by the safeguards associated with Title VII security-based swap dealer regulation applying to the non-U.S. person.

Business conduct condition – The proposed condition requiring the registered entity’s “as if” compliance with security-based swap dealer requirements for the disclosure of risks, characteristics, incentives and conflicts would assist the counterparty in assessing the transaction by providing it with a better understanding of the expected performance of the security-based swap, and provide additional transparency and insight into pricing. The proposed condition requiring the registered entity’s “as if” compliance with security-based swap dealer requirements regarding the suitability of recommendations would assist the registered entity in making appropriate recommendations. The proposed condition requiring the registered entity’s “as if” compliance with security-based swap dealer requirements regarding fair and balanced communications would better equip the counterparty to make more informed investment decisions.

Trade acknowledgment and verification condition – The proposed condition requiring the registered entity’s “as if” compliance with security-based swap dealer trade acknowledgment and verification requirements would provide a written record by which the counterparties to the transaction may memorialize the terms of a transaction, and ensure that this written record accurately reflects the terms of the transaction as understood by the respective counterparties.

Portfolio reconciliation condition – The proposed condition requiring the registered entity’s “as if” compliance with security-based swap dealer portfolio reconciliation requirements, but only with regard to the initial reconciliation of the security-based swap, is intended to help ensure the accuracy of the data reported to SDRs, and to help facilitate the ability of registered security-based swap data repositories to comply with requirements that they verify the information they receive.

Trading relationship documentation condition – The proposed condition requiring the registered entity to obtain and maintain trading relationship documentation involving the non-U.S. person relying on the exception and its counterparty is intended to help the Commission

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exception). Separate collections of information address the registration of security-based swap dealers and brokers, as well as the requirements associated with those registered entities as a matter of course, including recordkeeping requirements applicable to such registered entities. The separate collections of information associated with requirements of general applicability for registered security-based swap dealers and brokers are not addressed here, but instead form part of the collections of information associated with those separate requirements.

obtain a full view of the associated dealing activities, to avoid impediments to the Commission’s ability to identify fraud and abuse in connection with those transactions.

Consent to service condition – The proposed condition requiring the registered entity to obtain consent to service of process from its non-U.S. affiliate relying on the exception it intended to assist the Commission in efficiently taking action to address potential violations of the federal securities laws in connection with the transactions at issue.

“Listed jurisdiction” condition – The proposed use of information provided by applicants in connection with “listed jurisdiction” applications is to assist the Commission in evaluating the effectiveness of the financial responsibility requirements of jurisdictions regulating non-U.S. persons taking advantage of the exception, to help avoid creating an incentive for persons engaged in a security-based swap dealing business in the United States to book their transactions into entities that solely are subject to the regulation of jurisdictions that do not effectively require security-based swap dealers or comparable entities to meet certain financial responsibility standards, and accordingly to help avoid providing an unwarranted competitive advantage to non-U.S. persons that conduct security-based swap dealing activity in the United States without being subject to strong financial responsibility standards. The condition also is consistent with the view that applying financial responsibility requirements to the transactions at issue can help mitigate the potential for financial contagion to spread to U.S. market participants and to the U.S. financial system more generally

### **3. Consideration Given to Information Technology**

Disclosure of limited Title VII applicability – The condition requiring the registered entity to disclose the limited applicability of Title VII to the transactions at issue specifies that the registered entity provide this information contemporaneously with, and in the same manner as, the underlying arranging, negotiating or executing activity at issue to promote disclosure that would be useful for the counterparty.

Business conduct condition – The underlying security-based swap dealer business conduct requirements that are subject to “as if” compliance by the registered entity – relating to (i) disclosure of risks, characteristics, incentives and conflicts; (ii) suitability; and (iii) fair and balanced communications – do not prescribe particular forms or methods of compliance in connection with the collections of information so as to allow flexibility with respect to new technologies as they develop.

Trade acknowledgement and verification condition – The underlying security-based swap dealer trade acknowledgement and verification requirement that is subject to “as if” compliance by the registered entity requires that trade acknowledgments be provided electronically, and also permits security-based swap dealers to rely on the services of a third party to provide electronic acknowledgments on its behalf.

Portfolio reconciliation condition – The underlying security-based swap dealer portfolio reconciliation requirement that is subject to “as if” compliance by the registered entity does not prescribe particular forms or methods of compliance in connection with the collection of information so as to allow flexibility with respect to new technologies as they develop.

Trading relationship documentation and consent to service of process – The condition requiring the registered entity to obtain from its non-U.S. affiliate, and maintain, copies of

trading relationship documentation and a consent to service of process, would implicate underlying security-based swap dealer books and records requirements. Those underlying requirements provide for the use of electronic storage in a non-rewritable, non-erasable format.

Listed jurisdiction condition – Applications for “listed jurisdiction” status – in connection with the condition requiring the non-U.S. person relying on the exception must be subject to the margin and capital requirements of a listed jurisdiction – must be filed with the Commission consistent with proposed amendments to Exchange Act rule 0-13. Rule 0-13 provides for the electronic submissions of applications.

#### **4. Duplication**

The proposed conditions do not impose any duplicative conditions on registered entities or the non-U.S. persons relying on the exception. In this regard, we note that the collections at issue are connected with a proposed exception from a portion of the “security-based swap dealer” definition that effectively would require certain non-U.S. persons count their security-based swap dealing transactions against the applicable de minimis thresholds. As a result, certain of the collections associated with the proposed conditions – i.e., “as if” compliance with business conduct, trade acknowledgment and portfolio reconciliation requirements – in practice would substitute for collections of information that the non-U.S. person otherwise may incur in connection with the counting requirement.

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

The staff believes that none of the entities that may be subject to the conditions of the proposed exception would be small entities. The proposal accordingly would impose no burden on small entities.

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

The information is collected on a transaction basis or upfront as warranted, and therefore there is no way to omit the information collection requirements or require less frequent collection without undermining the purposes of the proposed exception.

#### **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 that 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

Not applicable.

## 10. Confidentiality

Disclosures required by the conditions of the proposed exception would be provided to the non-U.S. counterparties of the non-U.S. person relying on this exception; therefore, the Commission would not typically receive confidential information as a result of this collection of information. To the extent that the Commission receives records related to such disclosures from a registered entity through the Commission’s examination and oversight program, or through an investigation, or some other means, such information would be kept confidential, subject to the provisions of applicable law. Any applications for listed jurisdiction status would be made public.

## 11. Sensitive Questions

The collections of information do not expressly include Personally Identifiable Information (“PII”). Moreover, because we do not expect natural persons to participate in the security-based swap market, we do not expect that PII would be incorporated in any of the collections of information associated with the proposed exception. Accordingly, Commission staff does not envision any circumstance 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 the proposal is not likely to implicate the Federal Information Security Management Act of 2002 or the Privacy Act of 1974.

## 12. Burden of Information Collection

The staff estimates, based on available data, that up to 24 entities may seek to rely on the proposed exception to the de minimis counting requirement of Rule 3a71-3. In connection with the conditions to the proposed exception, each of those up to 24 entities would make use of an affiliated registered security-based swap dealer and/or registered broker. In general, the registered entity would be required to comply with the collections of information. Applications for “listed jurisdiction” status may be submitted by the up to 24 non-U.S. persons that may rely on the proposed exception, but the staff believes that the greater portion of such applications will be submitted by foreign financial authorities.

The staff particularly estimates that the proposal would be associated with the certain hourly burdens, which are summarized in the following chart and described in more detail below:

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%]

Title VII Disclosure Requirement (Group A)	Third-Party	12	12,609	0.00	0.00	0.08	0.08	1,050.08	12,609	0
Title VII Disclosure Requirement (Group B)	Third-Party	2	20,128	0.00	0.00	0.08	0.08	1,677.30	3,355	0
Title VII Disclosure Requirement (Group C)	Third-Party	10	422	0.00	0.00	0.08	0.08	35.20	352	0
Title VII Disclosure Policies/procedures	Recordkeeping	24	1	100.00	33.33	0.00	33.33	33.33	800	0
Transaction disclosures Framework develop.	Recordkeeping	24	1	1,200.00	400.00	120.00	520.00	520.00	12,480	0
Transaction disclosures System develop/maint.	Recordkeeping	24	1	8,000.00	2,666.67	4,000.00	6,666.67	6,666.67	160,000	0
Suitability Swap market CPs	Recordkeeping	1,116	1	2.00	0.67	0.00	0.67	0.67	744	0
Suitability Other CPs	Recordkeeping	498	1	5.00	1.67	0.00	1.67	1.67	830	0
Fair/balanced commun. Internal review	Recordkeeping	24	1	6.00	2.00	0.00	2.00	2.00	48	0
Trade Acknowledgment Requirement	Third-Party	24	3,152	0.11	0.04	0.14	0.18	554.33	13,304	0
Trade Acknowledgment Policies/procedures	Recordkeeping	24	1	80.00	26.67	40.00	66.67	66.67	1,600	0
Portfolio Reconciliation Initial reconciliation	Recordkeeping	24	1	0.00	0.00	417.50	417.50	417.50	10,020	0
Trade relat. document. Policies/procedures	Recordkeeping	24	1	20.00	6.67	0.00	6.67	6.67	160	0
Trade relat. document. ID and conveyance	Recordkeeping	24	1	0.00	0.00	104.00	104.00	104.00	2,496	0
Trade relat. document. Receipt/maintenance	Recordkeeping	24	1	0.00	0.00	52.00	52.00	52.00	1,248	0
Consent to service Drafting/transfer	Recordkeeping	24	1	2.00	0.67	0.00	0.67	0.67	16	0
Listed jurisdiction Application	Reporting	3	1	80.00	26.67	0.00	26.67	26.67	80	0
<b>TOTAL HOURLY BURDEN FOR ALL RESPONDENTS</b>									<b>220,142</b>	

### Disclosure of limited Title VII applicability

The staff believes that three categories of non-U.S. persons may seek to take advantage of the proposed exception:

*Group A* – Twelve U.S. entities may book transactions into non-U.S. affiliates to take advantage of the proposed exception. In the aggregate the staff estimates that those twelve entities will provide a total of 151,308 annual disclosures,<sup>4</sup> or 12,609 average annual disclosures per entity. Based on our preliminary belief that the requisite disclosures will take no more than five minutes each, **the staff estimates that in the aggregate those disclosures will amount to 1050.75 hours<sup>5</sup> annually across the twelve members of the group, or 12,609 hours annually in the aggregate.**

*Group B* – Two non-U.S. entities may fall below the applicable *de minimis* thresholds as a result of the proposed exception. In the aggregate the staff estimates that registered affiliates of those two entities will provide a total of 40,256 annual disclosures,<sup>6</sup> or 20,128 average annual

<sup>4</sup> The estimate of 151,308 annual disclosures reflects data that indicated that there are six relevant U.S. entities that in the aggregate annually engage in 37,827 annual transactions. That amount was doubled to address growth in the market and data-related uncertainty, and doubled again to account for disclosures that do not result in a transaction.

<sup>5</sup> 12,609 disclosures × five minutes per disclosures = 1050.75 hours.

<sup>6</sup> The estimate of 40,256 annual disclosures reflects data that indicated that there is one relevant non-U.S. entity that engages in 10,064 annual transactions. That amount was doubled to address

disclosures per entity. Based on our preliminary belief that the requisite disclosures will take no more than five minutes each, **the staff estimates that it will take an average of 1,667.3 hours<sup>7</sup> annually for members of the group to provide the disclosures, or 3,355 hours annually in the aggregate.**

*Group C* – Ten non-U.S. entities may use the proposed exception to help avoid incurring costs that otherwise would be required to assess compliance with the *de minimis* counting rule. In the aggregate the staff estimates that registered affiliates of those ten entities will provide a total of 4224 annual disclosures,<sup>8</sup> or 422 average annual disclosures per entity. Based on our preliminary belief that the requisite disclosures will take no more than five minutes each, **the staff estimates that it will take an average of 35.2 hours<sup>9</sup> annually for members of the group to provide the disclosures, or 352 hours annually in the aggregate.**

The staff further believes that each of the 24 total registered entities would initially be required to spend 100 hours to help ensure that appropriate disclosures are provided, with a total aggregate initial burden of 2400 hours. **The staff estimates that this will result in an annual burden of 33.33 hours per entity, or 800 hours annually in the aggregate.**<sup>10</sup>

#### Disclosure of risks, characteristics, incentives and conflicts

In connection with the requirement that the registered entity provide “as if” disclosure of risks, characteristics, incentives and conflicts of interest, the staff has estimated that each of those registered 24 entities would incur an initial burden of 1200 hours, or 28,800 hours in the aggregate, for developing the implementation framework. Each of those 24 registered entities further would incur an ongoing annual burden of 120 hours, or 2880 hours in the aggregate, for re-evaluation and modification of the framework. **The staff estimates that this will result in an annual burden of 520 hours per entity, or 12,480 hours annually in the aggregate.**<sup>11</sup>

The staff further has estimated that each of those 24 registered entities would incur an initial burden of 8000 hours, or 192,000 hours in the aggregate, related to system development, programming and testing in connection with that requirement. Each of those 24 entities also would incur an ongoing annual burden of 4000 hours, or 96,000 hours in the aggregate, for

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growth in the market and data-related uncertainty, and doubled again to account for disclosures that do not result in a transaction.

<sup>7</sup> 20,128 disclosures × five minutes per disclosures = 1667.3 hours.

<sup>8</sup> The estimate of 4224 annual disclosures reflects data that indicated that there are five relevant non-U.S. entities that in the aggregate annually engage in 1056 annual transactions. That amount was doubled to address growth in the market and data-related uncertainty, and doubled again to account for disclosures that do not result in a transaction.

<sup>9</sup> 422.4 disclosures × five minutes per disclosures = 35.2 hours.

<sup>10</sup> Annualized over three years, this initial burden would amount to an aggregate average of 800 hours per year (2400 hours ÷ three years), and a per-entity average of approximately 33.3 hours (800 hours ÷ 24 entities).

<sup>11</sup> Annualized over three years, those initial and ongoing burdens would amount to an aggregate average of 12,480 hours per year (28,800 hours ÷ three years + 2880 hours), and a per-entity average of 520 hours (12,480 hours ÷ 24 entities).

system maintenance. **The staff estimates that this will result in an annual burden of 6,666.67 hours per entity, or 160,000 hours annually in the aggregate.**<sup>12</sup>

### Suitability of recommendations

In connection with the requirement that the registered entity comply with security-based swap dealer suitability requirements “as if” it were a counterparty to the transaction, the staff has considered the burdens associated with the need of the registered entity to obtain representations from those counterparties so it may comply with the institutional suitability provisions of the suitability requirement.

The staff further estimates that the 24 non-U.S. persons that would rely on the exception in the aggregate would have a total of 1116 unique non-U.S. security-based swap counterparties that are also swap market participants, and 498 unique non-U.S. security-based swap counterparties that are not also swap market participants.<sup>13</sup> For the 1116 counterparties that are also swap market participants, most of the requisite representations already have been drafted, and each market participant would require two hours to assess the need for modifications and make any required modifications, amounting to an aggregate initial burden of 2232 hours. **The staff estimates that this will result in an annual burden of 0.67 hours per entity, or 744 hours annually in the aggregate.**<sup>14</sup>

Each of the 498 counterparties that are not also swap market participants would require five hours to review and agree to the relevant representations, amounting to an aggregate initial burden of 2490 hours. **The staff estimates that this will result in an annual burden of 1.67 hours per entity, or 830 hours annually in the aggregate.**<sup>15</sup>

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<sup>12</sup> Annualized over three years, those initial and ongoing burdens would amount to an aggregate average of 160,000 hours per year (192,000 hours ÷ three years + 96,000 hours), and a per-entity average of approximately 6667 hours (160,000 hours ÷ 24 entities).

<sup>13</sup> Analysis of current data indicates that the six U.S. entities engaged in security-based swap dealing activity above the de minimis thresholds in the aggregate have 161 unique non-U.S. counterparties that are swap market participants, and 70 unique non-U.S. counterparties that are not swap market participants. The one non-U.S. entity that may fall below the de minimis threshold due to the exception has 391 unique non-U.S. counterparties that are swap market participants, and 178 unique non-U.S. counterparties that are not swap market participants. The five additional non-U.S. persons that would be expected to incur assessment costs in connection with the “arranged, negotiated, or executed” counting standard in the aggregate have six unique non-U.S. counterparties that are swap market participants, and one unique non-U.S. counterparty that are not swap market participants. Adding together those estimates and then doubling them (in light of the uncertainty associated with the estimate and to account for potential growth of the security-based swap market) produces a total estimate of 1116 unique non-U.S. counterparties that are swap market participants, and 498 that are not.

<sup>14</sup> Annualized over three years, this initial burden would amount to an aggregate average of 744 hours per year (2232 hours ÷ three years), and a per-counterparty average of approximately 0.67 hours (744 hours ÷ 1116 counterparties).

<sup>15</sup> Annualized over three years, this initial burden would amount to an aggregate average of 830 hours per year (2490 hours ÷ three years), and a per-counterparty average of approximately 1.67 hours (830 hours ÷ 498 counterparties).



### Fair and balanced communications

In connection with the requirement that the registered entity comply with security-based swap dealer fair and balanced communications requirements “as if” it were a counterparty to the transactions at issue, the staff took the view that each of those 24 registered entities would incur an initial burden of six hours for internal review of certain communications, or an initial burden of 144 hours in the aggregate. **The staff estimates that this will result in an annual burden of 2 hours per entity, or 48 hours annually in the aggregate.**<sup>16</sup>

### Trade acknowledgment and verification

In connection with the requirement that the registered entity comply with security-based swap dealer trade fair and balanced communications requirements “as if” it were a counterparty to the transactions at issue, the staff took the view that each of those 24 registered entities would engage in a total of 75,654 aggregate transactions annually, or an average of approximately 3152 annual transactions per entity.

The staff further estimated that each of those 24 registered entities would incur 355 hours initially to develop an internal order and trade management system, or 8520 hours in the aggregate. Each of those 24 registered entities also would incur 436 hours annually for day-to-day technical support as well as amortized annual burdens associated with system or platform updates, or 10,464 hours in the aggregate. **The staff estimates that these initial and ongoing burdens will result in an annual burden of 554 hours per entity, or 13,304 annually in the aggregate.**<sup>17</sup>

In addition, the staff estimates that each of those 24 registered entities would incur 80 hours initially for the preparation of written policies and procedures to obtain verification of transaction terms, or 1920 hours in the aggregate. Each of those 24 registered entities would incur 40 hours annually to maintain those policies and procedures, or 960 hours in the aggregate. **The staff estimates that this will result in an annual burden of 66.7 hours per entity, or 1,600 hours annually in the aggregate.**<sup>18</sup>

### Portfolio reconciliation condition

In connection with the requirement that the registered entity comply with security-based swap dealer portfolio reconciliation requirements, but only with regard to the initial reconciliation of the security-based swap, **the staff estimates that each of those 24 registered entities annually would incur up to 417.5 hours, or 10,020 hours in the aggregate.**

<sup>16</sup> Annualized over three years, this initial burden would amount to an aggregate average of 48 hours per year (144 hours ÷ three years), and a per-entity average of two hours (48 hours ÷ 24 entities).

<sup>17</sup> Annualized over three years, those initial and ongoing burdens would amount to an aggregate average of 13,304 hours per year (8520 hours ÷ three years + 10,464 hours), and a per-entity average of approximately 554 hours (13,304 hours ÷ 24 entities).

<sup>18</sup> Annualized over three years, those initial and ongoing burdens would amount to an aggregate average of 1600 hours per year (1920 hours ÷ three years + 960 hours), and a per-entity average of approximately 66.7 hours (1600 hours ÷ 24 entities).

Trading relationship documentation condition

In connection with the requirement that the registered entity obtain from its non-U.S. affiliate, and maintain, trading relationship documentation, the staff estimates that each of the 24 registered entities and their non-U.S. affiliates jointly would require 20 hours to develop policies and procedures, or 480 initial burden hours in the aggregate.<sup>19</sup> **The staff estimates that this will result in an annual burden of 6.67 hours per entity, or 160 hours annually in the aggregate.**

The staff also estimates that each non-U.S. entity would incur an average of 104 hours per year (two hours per week) to identify and electronically convey such records. **The staff estimates that this will result in an annual burden of 104 hours per entity, or 2496 hours annually in the aggregate.**

The staff further estimates that each U.S. entity would incur an average of 52 hours per year (one hour per week) in connection with the receipt and maintenance of those records. **The staff estimates that this will result in an annual burden of 52 hours per entity, or 1248 hours annually in the aggregate.**

Consent to service condition

In connection with the proposed condition that the registered entity obtain consent to service of process from its non-U.S. affiliate, the staff estimated that each of the 24 registered entities and/or its non-U.S. affiliate jointly must initially expend 2 hours, or 48 hours in the aggregate in connection with the creation and transfer of those consents. **The staff estimates that this will result in an annual burden of 0.67 hours per entity, or 16 hours annually in the aggregate.**<sup>20</sup>

“Listed jurisdiction” condition

In connection with the “listed jurisdiction” condition, the Commission estimated three non-U.S. persons relying on the exception would file a listed jurisdiction application (with the remainder of such applications being filed by foreign financial authorities). The Commission further estimated that each of those three entities initially would incur 80 hours to prepare and submit those applications, for an aggregate initial burden of 240 hours. **The Commission estimates that this will result in an annual burden of 26.67 hours per entity, or 80 hours annually in the aggregate.**<sup>21</sup>

**These estimates result in a total estimated hourly burden of 220,141.60 per year.**

<sup>19</sup> Annualized over three years, this initial burden would amount to an aggregate average of 160 hours per year (480 hours ÷ three years), and a per-entity average of approximately 6.7 hours (160 hours ÷ 24 entities).

<sup>20</sup> Annualized over three years, this initial burden would amount to an aggregate average of 16 hours per year (48 hours ÷ three years), and a per-entity average of approximately 0.67 hours (16 hours ÷ 24 entities).

<sup>21</sup> Annualized over three years, this initial burden would amount to an aggregate average of 80 hours per year (240 hours ÷ three years), and a per-entity average of approximately 26.7 hours (80 hours ÷ three entities).

### 13. Estimate of Cost to Respondents

The staff estimates that the proposal would be associated with certain costs, which are summarized in the following chart and described in more detail below:

Summary of Dollar Costs										
		A.	B.	C.	D.	E.	F.	G.		
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
					[C ÷ 3 years]		[D + E]	[F * B]	[G * A]	[A * 0%]
Title VII Disclosure Policies/procedures	Recordkeeping	24	1	\$29,715.00	\$9,905.00	\$0.00	\$9,905.00	\$9,905.00	\$237,720.00	0
Fair/balanced commun. Statement drafting	Recordkeeping	24	1	\$6,300.00	\$2,100.00	\$0.00	\$2,100.00	\$2,100.00	\$50,400.00	0
Fair/balanced commun. Legal costs	Recordkeeping	24	1	\$8,820.00	\$2,940.00	\$0.00	\$2,940.00	\$2,940.00	\$70,560.00	0
Listed jurisdiction Application	Reporting	3	1	\$84,000.00	\$28,000.00	\$0.00	\$28,000.00	\$28,000.00	\$84,000.00	0
<b>TOTAL COST FOR ALL RESPONDENTS</b>									<b>\$442,680.00</b>	

#### Disclosure of limited Title VII applicability

In connection with the requirement for disclosure of limited Title VII applicability, the staff estimates that each of the 24 registered entities would incur an initial cost of \$29,715, for an aggregate of \$713,160. **The staff estimates that this will result in an annual burden of \$9,905 hours per entity, or \$237,720 hours annually in the aggregate.**<sup>22</sup>

#### Fair and balanced communications

In connection with the requirement that the registered entity comply with security-based swap dealer fair and balanced communications requirements “as if” it were a counterparty to the transactions at issue, the staff estimates that each of those 24 registered entities would incur an initial \$6300 in legal costs associated with the drafting or review of certain marketing materials, amounting to \$151,200 in the aggregate. **The staff estimates that this will result in an annual burden of \$2,100 hours per entity, or \$50,400 hours annually in the aggregate.**<sup>23</sup>

As part of that condition requiring fair and balanced communications, the staff also estimates that each of those 24 registered entities would incur an initial \$8820 in legal costs associated with the drafting or review of certain marketing materials, amounting to \$211,680 in

<sup>22</sup> Annualized over three years, this initial cost would amount to an aggregate average of \$237,720 per year ( $\$713,160 \div \text{three years}$ ), and a per-entity average of \$9905 ( $\$237,720 \div 24 \text{ entities}$ ).

<sup>23</sup> Annualized over three years, this initial cost would amount to an aggregate average of \$50,400 per year ( $\$151,200 \div \text{three years}$ ), and a per-entity average of \$2100 ( $\$50,400 \div 24 \text{ entities}$ ).

the aggregate. **The staff estimates that this will result in an annual burden of \$2,940 hours per entity, or \$70,560 hours annually in the aggregate.**<sup>24</sup>

“Listed jurisdiction” condition

In connection with the “listed jurisdiction” condition, the Commission estimated that the three non-U.S. persons that would file a listed jurisdiction application each would incur an initial \$84,000 for the services of outside professionals, for an aggregate cost of \$252,000. **The staff estimates that this will result in an annual burden of \$28,000 hours per entity, or \$84,000 hours annually in the aggregate.**<sup>25</sup>

**These estimates result in a total estimated cost burden of \$442,680 per year.**

**14. Estimate of Cost to the Federal Government**

Not applicable.

**15. Explanation of Changes in Burden**

Not applicable. Although rule 3a71-3 as it currently exists is associated with separate collections of information in 3235-0717, proposed new paragraph (d) to the rule would constitute a new and independent collection of information under a separate OMB number, and would not affect those other collections.

**16. Information Collections Planned for Statistical Purpose**

Not applicable.

**17. Explanation as to Why Expiration Date Will Not be Displayed**

The Commission is not seeking approval to not display the OMB approval expiration date.

**18. Exceptions to Certification**

Not applicable.

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

The rules do not employ statistical methods.

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<sup>24</sup> Annualized over three years, this initial cost would amount to an aggregate average of \$70,560 per year ( $\$211,680 \div$  three years), and a per-entity average of \$2940 ( $\$70,560 \div$  24 entities).

<sup>25</sup> Annualized over three years, this initial cost would amount to an aggregate average of \$84,000 per year ( $\$252,000 \div$  three years), and a per-entity average of approximately \$28,000 ( $\$84,000 \div$  three entities).