

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

OMB Control No. 3235-0771

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 adopted Rule 3a71-3(d)¹ to provide an exception from that “arranged, negotiated, or executed” counting requirement. There are collections of information associated with the following 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 entity² affiliated with the non-U.S. person relying on the exception (“relying entity”) 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; and (ii) trade acknowledgment and verification requirements.
- A condition requiring the registered entity to obtain from its non-U.S. affiliate, and maintain for not less than three years following the “arranging, negotiating, or executing” activity pursuant to the exception, the first two years in an easily accessible place, 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 maintaining for not less than three years following the “arranging, negotiating, or executing” activity pursuant to the exception, the first two years in an easily accessible place,, consent to service of process.
- A condition requiring the relying entity to be subject to the margin and capital requirements of a “listed jurisdiction” designated by the Commission.

¹ See Exchange Act Release No. 34-87780 (December 18, 2019).

² That entity may be registered either as a security-based swap dealer or as a broker.

- A condition requiring the registered entity to obtain from its non-U.S. affiliate, and maintain for not less than three years following the “arranging, negotiating, or executing” activity pursuant to the exception, the first two years in an easily accessible place, documentation regarding the non-U.S. affiliate’s compliance with the limitations on the use of the exception for covered inter-dealer security-based swaps.
- A condition requiring the registered entity to file with the Commission a notice that its associated persons may conduct “arranging, negotiating, or executing” activity in the United States.
- A condition requiring the registered entity to establish internal risk management control systems in accordance with Rule 15c3-4.³

2. Purpose and Use of Information Collection

Disclosure of limited Title VII applicability. The 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 condition requiring the registered entity’s “as if” compliance with security-based swap dealer requirements for the disclosure of risks, characteristics, incentives and conflicts is intended to 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 condition requiring the registered entity’s “as if” compliance with security-based swap dealer requirements regarding the suitability of recommendations is intended to assist the registered entity in making appropriate recommendations. The condition requiring the registered entity’s “as if” compliance with security-based swap dealer requirements regarding fair and balanced communications is intended to better equip the counterparty to make more informed investment decisions.

Trade acknowledgment and verification condition – The condition requiring the registered entity’s “as if” compliance with security-based swap dealer trade acknowledgment and verification requirements is intended to provide a written record by which the counterparties to

³ Because the amendment to Rule 3a71-3 requires the use of either a registered security-based swap dealer or a registered broker in connection with the transactions at issue, the amendment also implicates collections of information associated with security-based swap dealer or broker status (apart from the collections associated with the specific conditions of the 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.

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.

Trading relationship documentation condition – The condition requiring the registered entity to obtain and maintain trading relationship documentation involving the relying entity and its counterparty is intended to help the Commission 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 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 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.

Covered Inter-dealer conditions – The use of information provided by applicants in connection with the notice and compliance documentation requirements associated with the use of the conditional exception for covered inter-dealer security-based swaps is to assist the Commission in evaluating compliance with the limitations on such use of the exception.

Risk Management Control Systems condition – Compliance with Rule 15c3-4 by the registered entity engaged in arranging, negotiating, or executing activity in the United States is intended to promote the establishment and maintenance of effective risk management control systems by such entities.

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 acknowledgment 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.

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 relying entity must be subject to the margin and capital requirements of a listed jurisdiction – must be filed with the Commission consistent with amendments to Exchange Act rule 0-13. Rule 0-13 provides for the electronic submissions of applications.

Covered Inter-dealer conditions – A notice filed with the Commission associated with the use of the conditional exception for covered inter-dealer security-based swaps must be submitted by the registered entity to the electronic mailbox described on the Commission’s website at www.sec.gov at the “ANE Exception Notices.” The registered entity must also obtain from its non-U.S. affiliate, and maintain, copies of compliance documentation, which 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.

Risk Management Control Systems condition – This condition does 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.

4. Duplication

The conditions do not impose any duplicative conditions on registered entities or the relying entity. In this regard, we note that the collections at issue are connected with an 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 conditions – i.e., “as if” compliance with business conduct, trade acknowledgment requirements – in practice would substitute for collections of information that the relying entity 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 exception are small entities. The amendment 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 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 issued a release soliciting comment on the new “collection of information” requirements and associated paperwork burdens. The Commission received a number of comments that resulted in additional paperwork burdens, which are described in more detail in Section 15 below. 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 rulemaking have been posted on the Commission’s public website, and made available through <https://www.sec.gov/comments/s7-07-19/s70719.htm>.

9. Payment or Gift

Not applicable.

10. Confidentiality

Disclosures required by the conditions of the exception would be provided to the non-U.S. counterparties of the relying entity; 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 Information Collection does not collect information about individuals but rather only business contact information. Based on the business practice of handling the information collection, the collection does not constitute a system of records under the Privacy Act and does not require a PIA per the E-Government Act of 2002.

12. Burden of Information Collection

The staff continues to estimate, based on available data, that up to 24 entities may seek to rely on the exception to the de minimis counting requirement of Rule 3a71-3. In connection with the conditions to the exception, each of those up to 24 entities would make use of an affiliated registered security-based swap dealer 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 relying entities, but the staff believes that the greater portion of such applications will be submitted by foreign financial authorities.

The staff particularly continues to estimate that the amendment would be associated with the certain hourly burdens, which are summarized in the following chart and described in more detail below (the Commission adopted a conditional exception to provisions in an existing Commission rule. Accordingly, the information collections are being designated as a program change due to agency discretion):

| 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 | 1.00 | 0.33 | 0.00 | 0.33 | 0.33 | 372 | 0 |
| Suitability Other CPs | Recordkeeping | 498 | 1 | 2.50 | 0.83 | 0.00 | 0.83 | 0.83 | 415 | 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 |
| 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 |
| Notice of ANE activity | Reporting | 24 | 1 | 0.50 | 0.17 | 0.00 | 0.17 | 0.17 | 4 | 0 |
| Inter-dealer Compl. Policies/Procedures | Recordkeeping | 24 | 1 | 20.00 | 6.67 | 0.00 | 6.67 | 6.67 | 160 | 0 |
| Inter-dealer Compl. ID and conveyance | Recordkeeping | 24 | 1 | 0.00 | 0.00 | 104.00 | 104.00 | 104.00 | 2,496 | 0 |

| | | | | | | | | | | |
|--|---------------|----|---|----------|--------|-------|--------|--------|------------|---|
| Inter-dealer Compl. Receipt/maintenance | Recordkeeping | 24 | 1 | 0.00 | 0.00 | 52.00 | 52.00 | 52.00 | 1,248 | 0 |
| Risk Mgmt Control Policies/procedures | Recordkeeping | 24 | 1 | 2,000.00 | 666.66 | 0.00 | 666.66 | 666.66 | 16,000 | 0 |
| Risk Mgmt Control Maintenance/review | Recordkeeping | 24 | 1 | 0 | 0 | 250 | 250 | 250 | 6,000 | 0 |
| TOTAL HOURLY BURDEN FOR ALL RESPONDENTS | | | | | | | | | 235,242.44 | |

Disclosure of limited Title VII applicability

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

Group A – Twelve U.S. entities may book transactions into non-U.S. affiliates to take advantage of the exception. In the aggregate the staff continues to estimate that those twelve entities will provide a total of 151,308 annual disclosures,⁴ or 12,609 average annual disclosures per entity. Based on our belief that the requisite disclosures will take no more than five minutes each, **the staff continues to estimate that in the aggregate those disclosures will amount to 1050.75 hours⁵ annually for each of 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 exception. In the aggregate the staff continues to estimate that registered affiliates of those two entities will provide a total of 40,256 annual disclosures,⁶ or 20,128 average annual disclosures per entity. Based on our belief that the requisite disclosures will take no more than five minutes each, **the staff continues to estimate that it will take an average of 1,667.3 hours⁷ 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 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 continues to estimate that registered affiliates of those ten entities will provide a total of 4224 annual disclosures,⁸ or 422 average annual disclosures per entity. Based on our belief that the requisite disclosures will take no more than five minutes each, **the staff continues**

⁴ 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.

⁵ 12,609 disclosures × five minutes per disclosures = 1050.75 hours.

⁶ 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 growth in the market and data-related uncertainty, and doubled again to account for disclosures that do not result in a transaction.

⁷ 20,128 disclosures × five minutes per disclosures = 1667.3 hours.

⁸ 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.

to estimate that it will take an average of 35.2 hours⁹ annually for members of the group to provide the disclosures, or 352 hours annually in the aggregate.

The staff continues to believe 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 continues to estimate that this will result in an annual burden of 33.33 hours per entity, or 800 hours annually in the aggregate.**¹⁰

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 continues to estimate 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 continues to estimate that this will result in an annual burden of 520 hours per entity, or 12,480 hours annually in the aggregate.**¹¹

The staff further has estimated that each of those 24 registered entities will 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 will incur an ongoing annual burden of 4000 hours, or 96,000 hours in the aggregate, for system maintenance. **The staff continues to estimate that this will result in an annual burden of 6,666.67 hours per entity, or 160,000 hours annually in the aggregate.**¹²

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 suitability condition that the Commission has adopting lessens the institutional counterparty suitability requirements, upon which this prior analysis was based, in connection with transactions subject to the exception.

⁹ 422.4 disclosures × five minutes per disclosures = 35.2 hours.

¹⁰ 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).

¹¹ 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).

¹² 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).

The staff continues to estimate that the 24 relying entities 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.¹³ 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 one hour to assess the need for modifications and make any required modifications, amounting to an aggregate initial burden of 1116 hours. **The staff estimates that this will result in an annual burden of 0.33 hours per entity, or 372 hours annually in the aggregate.**¹⁴

Each of the 498 counterparties that are not also swap market participants would require 2.5 hours to review and agree to the relevant representations, amounting to an aggregate initial burden of 1245 hours. **The staff estimates that this will result in an annual burden of 0.83 hours per entity, or 415 hours annually in the aggregate.**¹⁵

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 continues to estimate that this will result in an annual burden of 2 hours per entity, or 48 hours annually in the aggregate.**¹⁶

¹³ 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 continues to estimate 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.

¹⁴ Annualized over three years, this initial burden would amount to an aggregate average of 372 hours per year (1116 hours ÷ three years), and a per-counterparty average of approximately 0.33 hours (372 hours ÷ 1116 counterparties).

¹⁵ Annualized over three years, this initial burden would amount to an aggregate average of 415 hours per year (1245 hours ÷ three years), and a per-counterparty average of approximately 0.83 hours (415 hours ÷ 498 counterparties).

¹⁶ 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).

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 continues to estimate that these initial and ongoing burdens will result in an annual burden of 554 hours per entity, or 13,304 annually in the aggregate.**¹⁷

In addition, the staff continues to estimate 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 continues to estimate that this will result in an annual burden of 66.7 hours per entity, or 1,600 hours annually in the aggregate.**¹⁸

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 continues to estimate 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.¹⁹ **The staff continues to estimate that this will result in an annual burden of 6.67 hours per entity, or 160 hours annually in the aggregate.**

The staff also continues to estimate 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 continues to estimate that this will result in an annual burden of 104 hours per entity, or 2496 hours annually in the aggregate.**

The staff further continues to estimate 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

¹⁷ 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).

¹⁸ 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).

¹⁹ 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 6.67 hours (160 hours ÷ 24 entities).

records. **The staff continues to estimate 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 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 continues to estimate that this will result in an annual burden of 0.67 hours per entity, or 16 hours annually in the aggregate.**²⁰

“Listed jurisdiction” condition

In connection with the “listed jurisdiction” condition, the Commission estimated three relying entities 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 continues to estimate that this will result in an annual burden of 26.67 hours per entity, or 80 hours annually in the aggregate.**²¹

Covered Inter-dealer Compliance documentation and Notice conditions

In connection with the requirement that the registered entity obtain from its non-U.S. affiliate, and maintain, records confirming compliance with the covered inter-dealer threshold, 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.²² **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**

²⁰ 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).

²¹ 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).

²² 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).

staff estimates that this will result in an annual burden of 52 hours per entity, or 1248 hours annually in the aggregate.

In connection with the requirement that the registered entity file with the Commission a notice that its associated persons may conduct “arranging, negotiating, or executing” activity in the United States, the staff estimates that that each of the 24 registered entities would require would incur 0.5 hours to prepare and submit a notice, for an aggregate initial burden of 12 hours. **The Commission estimates that this will result in an annual burden of 0.17 hours per entity, or 4 hours annually in the aggregate.**²³

Risk Management Control Systems condition

In connection with the requirement that the registered entity establish risk management control systems, the staff estimates that 24 registered entities will bear a one-time burden of 2,000 hours to initially set up risk management control systems, or 48,000 initial burden hours in the aggregate.²⁴ **The staff estimates that this will result in an annual burden of 666.67 hours per entity, or 16,000 hours annually in the aggregate.**

The staff further estimates that each U.S. entity would incur an average of 250 hours per year in connection with the review and maintenance of those systems. **The staff estimates that this will result in an annual burden of 250 hours per entity, or 6000 hours annually in the aggregate.**

These estimates result in a total estimated hourly burden of 235,242.44 per year.

13. Estimate of Cost to Respondents

The staff estimates that the amendment would be associated with certain costs, which are summarized in the following chart and described in more detail below (the Commission adopted a conditional exception to provisions in an existing Commission rule. Accordingly, the information collections are being designated as a program change due to agency discretion):

| 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 | \$30,598.00 | \$10,199.33 | \$0.00 | \$10,199.33 | \$10,199.33 | \$244,784 | 0 |

²³ Annualized over three years, this initial burden would amount to an aggregate average of 4 hours per year (12 hours ÷ three years), and a per-entity average of approximately 0.17 hours (4 hours ÷ 24 entities).

²⁴ Annualized over three years, this initial burden would amount to an aggregate average of 16,000 hours per year (48,000 hours ÷ three years), and a per-entity average of approximately 666.67 hours (16,000 hours ÷ 24 entities).

| | | | | | | | | | | |
|--|---------------|----|---|-------------|-------------|-------------|-------------|-------------|----------------|---|
| Fair/balanced commun. Statement drafting | Recordkeeping | 24 | 1 | \$6,487.20 | \$2,162.40 | \$0.00 | \$2,162.40 | \$2,162.40 | \$51,897.60 | 0 |
| Fair/balanced commun. Legal costs | Recordkeeping | 24 | 1 | \$9,082.00 | \$3,027.33 | \$0.00 | \$3,027.33 | \$3,027.33 | \$72,656.00 | 0 |
| Listed jurisdiction Application | Reporting | 3 | 1 | \$86,496.00 | \$28,832.00 | \$0.00 | \$28,832.00 | \$28,832.00 | \$86,496.00 | 0 |
| Risk Mgmt Control information technology | Recordkeeping | 24 | 1 | \$16,000.00 | \$5,333.33 | \$0.00 | \$5,333.00 | \$5,333.00 | \$128,000.00 | 0 |
| Risk Mgmt Control ongoing maintenance | Recordkeeping | 24 | 1 | \$0.00 | \$0.00 | \$20,500.00 | \$20,500.00 | \$20,500.00 | \$492,000.00 | 0 |
| TOTAL COST FOR ALL RESPONDENTS | | | | | | | | | \$1,075,833.60 | |

Disclosure of limited Title VII applicability

In connection with the requirement for disclosure of limited Title VII applicability, the staff continues to estimate that each of the 24 registered entities would incur an initial cost of \$30,598, for an aggregate of \$734,352. **The staff estimates that this will result in an annual burden of \$10,199 per entity, or \$244,784 annually in the aggregate.**²⁵

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 continues to estimate that each of those 24 registered entities would incur an initial \$6,487.20 in legal costs associated with the drafting or review of certain marketing materials, amounting to \$155,692 in the aggregate. **The staff estimates that this will result in an annual burden of \$2,162.40 per entity, or \$51,897.60 annually in the aggregate.**²⁶

As part of that condition requiring fair and balanced communications, the staff also continues to estimate that each of those 24 registered entities would incur an initial \$9,082 in legal costs associated with the drafting or review of certain marketing materials, amounting to \$217,968 in the aggregate. **The staff estimates that this will result in an annual burden of \$3,027.33 per entity, or \$72,656 annually in the aggregate.**²⁷

“Listed jurisdiction” condition

In connection with the “listed jurisdiction” condition, the Commission continues to estimate that the three relying entities that would file a listed jurisdiction application each would incur an initial \$86,496 for the services of outside professionals, for an aggregate cost of

²⁵ Annualized over three years, this initial cost would amount to an aggregate average of \$244,784 per year ($\$734,352 \div \text{three years}$), and a per-entity average of \$10,199.33 ($\$244,784 \div 24$ entities).

²⁶ Annualized over three years, this initial cost would amount to an aggregate average of \$51,897.60 per year ($\$155,692.80 \div \text{three years}$), and a per-entity average of \$2162.40 ($\$51,897.60 \div 24$ entities).

²⁷ Annualized over three years, this initial cost would amount to an aggregate average of \$72,656 per year ($\$217,968 \div \text{three years}$), and a per-entity average of \$3027.33 ($\$72,656 \div 24$ entities).

\$259,488. The staff estimates that this will result in an annual burden of \$28,832 per entity, or \$86,496 annually in the aggregate.²⁸

Risk Management Control Systems condition

In connection with the requirement that the registered entity establish risk management control systems, a registered entity may need to incur start-up information technology external costs with respect to setting up a risk control management system. The staff estimates that a registered entity will incur an average of approximately \$16,000 for initial hardware and software expenses. **The staff estimates that the initial burden will result in an annual burden of \$5,333.33 per entity, or \$128,000 annually in the aggregate.**²⁹

The staff also estimates that each registered entity would incur ongoing cost of approximately \$20,500 per registered entity. **The staff estimate that this will result in an annual burden of \$20,500 per entity, or \$492,000 annually in the aggregate.**

These estimates result in a total estimated cost burden of \$1,075,833.60 per year.

14. Estimate of Cost to the Federal Government

Not applicable.

15. Explanation of Changes in Burden

The Commission has revised its burden estimates for some of the information collections, and identified new information collections, as summarized in this chart:

| Name of Information Collection | Annual Industry Burden | Annual Industry Burden Previously Reviewed | Change in Burden | Reason for Change |
|---|-------------------------------|---|-------------------------|---------------------------|
| <u>Suitability</u> Swap market CPs | 372 hours | 744 hours | (372 hours) | Change in Agency Estimate |
| <u>Suitability</u> Other CPs | 415 hours | 830 hours | (415 hours) | Change in Agency Estimate |
| <u>Portfolio reconciliation</u> initial reconciliation | 0 | 10,020 hours | (10,020 hours) | Condition Not Adopted |
| <u>Title VII Disclosure</u> Policies/procedures | \$244,784 | \$237,720.00 | \$7,064.00 | Inflation |
| <u>Fair/balanced commun.</u> Statement drafting | \$51,897.60 | \$50,400.00 | \$1,497.60 | Inflation |
| <u>Fair/balanced commun.</u> Legal costs | \$72,656.00 | \$70,560.00 | \$2,096.00 | Inflation |
| <u>Listed jurisdiction</u> Application | \$86,496.00 | \$84,000.00 | \$2,496.00 | Inflation |
| <u>Notice of ANE activity</u> | 4 | 0 | 4 | New burden |

²⁸ Annualized over three years, this initial cost would amount to an aggregate average of \$86,496 per year ($\$259,488 \div \text{three years}$), and a per-entity average of approximately \$28,832 ($\$86,496 \div \text{three entities}$).

²⁹ Annualized over three years, this initial cost would amount to an aggregate average of \$128,000 per year ($\$25,833.33 \div \text{three years}$), and a per-entity average of approximately \$5,333.33 ($\$128,000 \div 24 \text{ entities}$).

| | | | | |
|---|--------------|---|--------------|------------|
| Inter-dealer Compl. Policies/Procedures | 160 | 0 | 160 | New burden |
| Inter-dealer Compl. ID and conveyance | 2,496 | 0 | 2,496 | New burden |
| Inter-dealer Compl. Receipt/maintenance | 1,248 | 0 | 1,248 | New burden |
| Risk Mgmt Control Policies/procedures | 16,000 | 0 | 16,000 | New burden |
| Risk Mgmt Control Maintenance/review | 6,000 | 0 | 6,000 | New burden |
| Risk Mgmt Control Information technology | \$128,000.00 | 0 | \$128,000.00 | New burden |
| Risk Mgmt Control Ongoing maintenance | \$492,000.00 | 0 | \$492,000.00 | New burden |

These changes in burden are discussed in more detail below.

a. Suitability condition

The Commission revised the estimate for the suitability condition down from 744 hours to 372 hours for swap market counterparties and from 830 hours to 415 hours for other counterparties to account for a modification that provides an alternative means of satisfying the counterparty-specific prong of the condition. The modification partially addresses a suggestion by a commenter to reduce both prongs of the suitability condition to a disclaimer when the registered entity does not have primary client responsibility for the counterparty.³⁰

b. Portfolio Reconciliation Condition

The Commission eliminated the burden associated with the proposed portfolio reconciliation condition because the Commission is persuaded by comments that the burdens of compliance with the proposed condition would not justify its benefits, and is therefore not adopting the proposed portfolio reconciliation condition. As a result of elimination of the proposed portfolio reconciliation condition, the Commission is eliminating the 10,200 hour burden associated with that proposed condition.

c. Title VII Disclosure condition, Fair and balanced communications condition, and “Listed Jurisdiction” condition

The Commission revised the estimates upwards for the Title VII disclosure condition, fair and balanced communications, and “Listed Jurisdiction” condition with respect to costs for respondents to account for inflation.

d. Covered Inter-dealer Compliance documentation and Notice conditions

The Commission created new estimates for the costs of compliance documentation and notice conditions associated with the use of the conditional exception in the covered

³⁰ See letter from Briget Polichene, CEO, Institute of International Bankers, and Kenneth E. Bentsen, President and CEO, Securities Industry and Financial Markets Association, dated July 23, 2019 at 13.

inter-dealer context. These conditions facilitate the implementation of the limits on the availability of the exception in connection with certain covered inter-dealer security-based swaps. The Commission is adopting the limits on the availability of the exception in the covered inter-dealer context and the associated compliance documentation and notice conditions to, among other reasons, help mitigate concerns expressed by commenters that the conditional exception as proposed could allow firms to structure large portions of their business to avoid Title VII while continuing to pose risks to the U.S. financial system.³¹

e. Risk Management Control Systems condition

The Commission created new estimates for costs of the risk management control systems condition associated with the use of a broker as the registered entity for purposes of the conditional exception. The risk management control systems condition is intended to help reduce the potential for disparities between firms that make use of a registered broker for purposes of the exception and those that make use of a registered security-based swap dealer. Reducing the potential for such disparities should help mitigate a commenter's concern that the conditional exception could allow non-U.S. persons to exit the Title VII regulatory regime without exiting the U.S. market.³²

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.

³¹ See letter from Dennis Kelleher, President and CEO, Better Markets, dated July 23, 2019 at 1, 25; letter from Americans for Financial Reform Education Fund, dated July 23, 2019 at 1-3.

³² See letter from Stephen Berger, Managing Director, Citadel, dated July 23, 2019 at 2.