

SUPPORTING STATEMENT for the Paperwork Reduction Act Information Collection
Submission for Rules 15Fi-3 through 15Fi-5 – Risk Mitigation Techniques for Uncleared
Security-Based Swaps
New Information Collection Request

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

Section 15F(i)(1) of the Exchange Act, as added by Section 764(a) of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),¹ requires each registered security-based swap dealer (“SBS dealer”) and each registered major security-based swap participant (“major SBS participant”) (each SBS dealer and each major SBS participant hereafter referred to as an “SBS Entity”) to conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.² Section 15F(i)(2) of the Exchange Act provides that the Securities and Exchange Commission (“Commission”) shall adopt rules governing documentation standards for SBS Entities.³

Accordingly, on December 18, 2018, the Commission proposed a series of new rules that would require the application of specific risk mitigation techniques to portfolios of security-based swaps not submitted for clearing.⁴ Specifically:

- Proposed Rule 15Fi-3 would require SBS Entities to reconcile outstanding security-based swaps with applicable counterparties on a periodic basis.
- Proposed Rule 15Fi-4 would require SBS Entities to engage in certain forms of portfolio compression exercises with their counterparties, as appropriate.
- Proposed Rule 15Fi-5 would require SBS Entities execute written security-based swap trading relationship documentation with each of its counterparties prior to, or contemporaneously with, executing a security-based swap transaction.

Each of these proposed rules would impose new collection of information requirements on SBS Entities. The title of these new collections of information is, collectively, “Rules 15Fi-

¹ Public Law 111–203, 124 Stat. 1376 (2010). Unless otherwise indicated, references to “Title VII” in this release are to Subtitle B of Title VII of the Dodd-Frank Act.

² 15 U.S.C. 78o-10(i)(1).

³ 15 U.S.C. 78o-10(i)(2).

⁴ See Risk Mitigation Techniques for Uncleared Security-Based Swaps, Exchange Act Release No. 84861 (Dec. 18, 2018), 84 FR 4614 (Feb. 15, 2019) (“Risk Mitigation Proposing Release”).

2. Purpose and Use of the Information Collection

A. Proposed Rule 15Fi-3: Portfolio Reconciliation

The information shared by counterparties to a security-based swap transaction periodically during the portfolio reconciliation process, as contemplated by the underlying requirements in proposed Rule 15Fi-3, should play an important role in assisting those counterparties in identifying and resolving discrepancies involving key terms of their transactions on an ongoing basis. This information also should allow those counterparties to improve their management of internal risks related to the enforcement of their rights and the performance of their obligations under a security-based swap.

For example, the information obtained and provided in the course of portfolio reconciliation should help ensure that the counterparties to a security-based swap are and remain in agreement with respect to all material terms throughout the life of the transaction, thereby mitigating the possibility that a discrepancy could unexpectedly affect either side’s ability to perform any or all of its obligations under the contract, including those obligations related to the posting of collateral. Moreover, requiring SBS Entities to agree in writing with each of their counterparties on the terms of the portfolio reconciliation (including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation) should help to minimize any discrepancies regarding the portfolio reconciliation process itself, thereby ensuring that it operates in as efficient and cost-effective means possible.

Finally, the requirement to report certain unresolved valuation disputes to the Commission should assist the Commission in identifying potential issues with respect to an SBS Entity’s internal valuation methodology and also could serve as an indication of a widespread market disruption in cases where the Commission receives a large number of such notices from multiple firms.

⁵ The Risk Mitigation Proposing Release also contains requirements that would amend the following existing collections of information:

- Rule 17a-3 – Records to be made by certain brokers and dealers (OMB control number 3235-0033);
- Rule 17a-4 – Records to be preserved by certain brokers and dealers (OMB control number 3235-0279);
- Rule 18a-5 – Records to be made by certain security-based swap dealers and major security-based swap participants (OMB control number 3235-0745);
- Rule 18a-6 – Records to be preserved by certain security-based swap dealers and major security-based swap participants (OMB control number 3235-0751); and
- Rule 3a71-6 – Substituted Compliance for Foreign Security-Based Swap Dealers (OMB control number 3235-0715).

Analyses of the amendments to those existing collections are being submitted to OMB as separate supporting statements.

1. Proposed Rule 15Fi-4: Portfolio Compression

The underlying portfolio compression requirements in Proposed Rule 15Fi-4 should help market participants by eliminating redundant uncleared derivatives contracts, thereby potentially reducing a market participant's credit risk to its direct counterparties, including by eliminating all outstanding contracts with some counterparties, without affecting the market participant's overall economic position. The proposed rule also should lead to processing improvements for market participants by virtue of the fact that both SBS Entities and their counterparties should ultimately have fewer trades to manage, maintain, and settle, resulting in fewer opportunities for processing errors, failures, or other problems that could develop throughout the lifecycle of a transaction.

2. Proposed Rule 15Fi-5: Written Trading Relationship Documentation

The information required to be contained in the underlying written trading relationship documentation pursuant to proposed Rule 15Fi-5 should help ensure that each SBS Entity mitigates risk with respect to its security-based swap portfolio by, among other things, enhancing clarity and legal certainty from the outset of a transaction regarding each party's rights and obligations. This outcome should help to reduce exposure to, among other things, counterparty credit risk and promote agreement regarding the proper valuation and other material terms of a security-based swap.

3. Consideration Given to Improved Information Technology

The proposed rules do not prescribe particular forms or methods of compliance for SBS Entities so as to allow flexibility with respect to new technologies as they develop. For example, Commission staff notes that market participants currently engaging in portfolio reconciliation and portfolio compression exercises in both the swap and security-based swap markets are doing so using automated processes, some of which are being offered by third party vendors. Under the proposal, SBS Entities would be permitted to use such platforms in connection with proposed Rules 15Fi-3 and 15Fi-4, so long as they comply with specific elements set forth in those rules. Similarly, although proposed Rule 15Fi-5 requires that an SBS Entity's trading relationship document with its counterparties be "in writing," it does not specify how the underlying documentation is required to be memorialized, stored, or used. As a result, SBS Entities would have the discretion to allow for the trading relationship documentation created pursuant to proposed Rule 15Fi-5 to be executed, stored, and monitored in electronic format. Such methods of storage and use also could apply to the policies and procedures requirements in all three proposed rules.

4. Duplication

Commission staff expects that many SBS Entities will be dually-registered with the Commodity Futures Trading Commission ("CFTC") as swap dealers and major swap participants. As the proposed rules are largely similar to those adopted by the CFTC, dually-registered entities will already have procedures and systems in place to collect the information. However, the information provided to the CFTC will address swaps while the information provided to the Commission will address SBS. With respect to mixed swaps, duplicative information may be provided to both the CFTC and the Commission, depending on the facts and circumstances. In these instances, the requirement to provide duplicative information to the

Commission and CFTC would be unavoidable due to the fact that the Dodd-Frank Act provides that the two agencies share jurisdiction over mixed swaps.

5. Effects on Small Entities

Based on feedback from industry participants about the security-based swap market, entities that would register as SBS dealers or major SBS participants would likely exceed the thresholds defining “small entities”. Thus, it is unlikely that the requirements under proposed Rules 15Fi-3 through 15Fi-5 would affect small entities.

6. Consequences of Not Conducting Collection

If adopted, Rules 15Fi-3 through 15Fi-5 would be promulgated pursuant to Section 15F(i)(2) of the Exchange Act, which requires that the Commission “adopt rules governing *documentation standards* for security-based swap dealers and major security-based swap participants.”⁶ Accordingly, the collections of information are at the heart of each of the underlying documentation requirements of the proposed rules, such that not conducting them (or reducing the frequency of collection) would not be consistent with the statutory provisions or the intended effects of the proposal. Moreover, the policies and procedures required to be established, maintained, and followed pursuant to Proposed Rules 15Fi-3 through 15Fi-5 are instrumental in focusing and assessing compliance with the underlying rules, consistent with how similar requirements are used in numerous other Commission rules. Thus, eliminating such collections (or reducing the frequency of collection) also would be inconsistent with the applicable statutory provisions and the intended effects of the proposal.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

Not applicable. The final rules are not inconsistent with 5 CFR 1320.5(d)(2)

8. Consultations Outside the Agency

In February 2019, the Commission requested comment on the collection of information requirements in the Risk Mitigation Proposing Release.⁷ A copy of the applicable 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 and staff from other financial regulators (including the CFTC and foreign financial regulators) 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

⁶ 15 U.S.C. 78o-10(i)(2) (emphasis added).

⁷ See Risk Mitigation Proposing Release, 84 FR at 4639.

No payment or gift is provided to respondents.

10. Confidentiality

Proposed Rule 15Fi-3(c) would require an SBS Entity to promptly notify the Commission of any security-based swap valuation dispute in excess of \$20,000,000 (or its equivalent in any other currency) if not resolved within: (1) three business days, if the dispute is with a counterparty that is an SBS Entity; or (2) five business days, if the dispute is with a counterparty that is not an SBS Entity. The Commission requested comment as to whether these notices should be submitted to the Commission on a confidential basis. Moreover, although the rule does not expressly require it, SBS Entities may choose to voluntarily include in a notice the name of one or more persons to contact with any follow-up questions on the contents of the notice, along with each person's work phone number and/or work email address.

No other information would be submitted directly to the Commission under proposed Rules 15Fi-3 through 15Fi-5. To the extent that the Commission receives confidential information pursuant to this collection of information that is otherwise not publicly available, including in connection with examinations or investigations, that information will be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 552, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)).

11. Sensitive Questions

No information of a sensitive nature will be required under this collection of information. Furthermore, other than contact information that may be voluntarily included in a notice of a security-based swap valuation dispute submitted to the Commission pursuant to proposed Rule 15Fi-3(c) (as described in Item 10 above), we do not believe that the collection of information will otherwise contain Personally Identifiable Information ("PII").⁸ The agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has determined that the information collection does not trigger the Privacy Impact Assessment (PIA) requirement.

12. Burden of Information Collection

The staff estimates, based on data obtained from the CFTC, the Depository Trust & Clearing Corporation and conversations with market participants, that approximately 50 entities may meet the definition of SBS dealer, and up to five entities may meet the definition of major SBS participant. Further, we estimate that approximately 35 entities will be dually registered with the CFTC as swap entities. Accordingly, we have used these estimates for the calculation of reporting burdens. The proposal is being made pursuant to the Commission's authority to

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.

prescribe standards by rule or regulation, and is being categorized as a program change due to agency discretion.

A summary of the estimated hour burdens is in the following chart, with a more detailed explanation below.

Summary of Hourly Burdens								
Name of Information Collection	Number of Entities Impacted	Small Business Entities Affected	Type of Burden	Ongoing or Initial Burden	Annual Responses per Entity	Burden per Entity per Response	Annual Burden Per Entity	Annual Industry Burden
Reconciliation with other SBS Entities	55	0	Recordkeeping	Ongoing	760	0.25	190	10,450
				Initial One-Time	N/A	N/A	N/A	
Reconciliation with non-SBS Entities	55	0	Recordkeeping	Ongoing	455	0.5	227.5	12,512.5
				Initial One-Time	N/A	N/A	N/A	
Reconciliation Policies and Procedures (Dual SEC/CFTC)	35	0	Recordkeeping	Ongoing	1	40	40	1411.67
				Initial One-Time	N/A	1	0.33	
Reconciliation Policies and Procedures (SEC Only)	20	0	Recordkeeping	Ongoing	1	40	40	1333.33
				Initial One-Time	N/A	80	26.67	
Valuation Dispute Notices	55	0	Reporting	Ongoing	1	24	24	1,320
				Initial One-Time	N/A	N/A	N/A	
Compression and Offsets with All Counterparties	55	0	Recordkeeping	Ongoing	736	0.1715	124.16	6,828.8
				Initial One-Time	N/A	N/A	N/A	
Compression Policies and Procedures (Dual SEC/CFTC)	35	0	Recordkeeping	Ongoing	1	40	40	1411.67
				Initial One-Time	N/A	1	0.33	
Compression Policies and Procedures (SEC Only)	20	0	Recordkeeping	Ongoing	1	40	40	1333.33
				Initial One-Time	N/A	80	26.67	
Prepare and Negotiate Documentation	55	0	Recordkeeping	Ongoing	N/A	N/A	N/A	197,450
				Initial One-Time	N/A	10,771.36	3,590	
Documentation Policies and Procedures (Dual SEC/CFTC)	35	0	Recordkeeping	Ongoing	1	40	40	1411.67
				Initial One-Time	N/A	1	0.33	
Documentation Policies and Procedures (SEC Only)	20	0	Recordkeeping	Ongoing	1	40	40	1333.33
				Initial One-Time	N/A	80	26.67	
Periodic Audit of Documentation	55	0	Recordkeeping	Ongoing	368	10	3680	202,400
				Initial One-Time	N/A	N/A	N/A	
TOTAL ANNUAL INDUSTRY BURDEN								439,196.3

A. Proposed Rule 15Fi-3 (Portfolio Reconciliation)

1. Portfolio Reconciliation with Other SBS Entities

Under proposed Rule 15Fi-3(a), the approximately 55 respondent SBS Entities would be required to reconcile security-based swap portfolios with other SBS Entities on a daily, weekly, or quarterly basis, depending upon the size of the portfolio.⁹ For purposes of this requirement, we preliminarily estimate that each SBS Entity will engage in security-based swap transactions with approximately one-third of the other 54 SBS Entities, meaning that an SBS Entity will maintain security-based swap portfolios with approximately 18 SBS Entities. Of this total, we preliminarily believe that, on average, two SBS Entity counterparty portfolios will require daily reconciliation (*i.e.*, a portfolio consisting of 500 or more uncleared security-based swaps), four SBS Entity counterparty portfolios will require weekly reconciliation (*i.e.*, a portfolio of more than 50 but fewer than 500 uncleared security-based swaps), and the remaining 12 SBS Entity counterparty portfolios will require quarterly reconciliation (*i.e.* a portfolio of no more than 50 uncleared security-based swaps).¹⁰ We therefore estimate that each SBS Entity will engage in an average of 760 portfolio reconciliations with other SBS Entities per year.¹¹

We also preliminarily believe that each portfolio reconciliation is likely to be conducted through an automated process.¹² As a result, we preliminarily believe that each reconciliation will require an average of 30 minutes to complete in total (which is the combined estimate for both counterparties), regardless of the size of the security-based swap portfolio with the applicable counterparty.¹³ **Using these figures, the Commission preliminarily estimates that compliance with proposed Rule 15Fi-3(a), as it relates to engaging in portfolio reconciliation with other SBS Entities, will impose an average annual burden of approximately 190 hours annually on each of the estimated 55 SBS Entity respondent, for an estimated average annual burden of 10,450 hours in the aggregate.**¹⁴

⁹ See Risk Mitigation Proposing Release, 84 FR at 4641 n. 171 (citing a number of prior Commission releases estimating that approximately 50 entities may meet the definition of SBS dealer, and up to five entities may meet the definition of major SBS participant).

¹⁰ These estimates are consistent with those used by the CFTC in connection with its portfolio reconciliation rule. See Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 FR 81519, 81528 (Dec. 28, 2010).

¹¹ This estimate uses 252 business days for purposes of the daily portfolio reconciliation requirement, which is consistent with the definition of “business day” in proposed Rule 15Fi-1(b).

¹² Commission staff recognizes that some respondents may choose to engage a third-party vendor to conduct portfolio reconciliations. For simplicity, however, the burden estimate is based upon SBS Entities conducting these activities internally, without the use of third-party vendors.

¹³ Because the 30 minute estimate is for the entire reconciliation process, without respect to how that time is allocated between the two parties, to avoid double-counting we have divided it by one-half in the context of security-based swap portfolios between two SBS Entities, resulting in an estimate of 15 minutes per reconciliation per counterparty for those portfolios.

¹⁴ Rule 15Fi-3(a)(1) and 15Fi-3(b)(1) also require an SBS Entity to agree in writing with each of its counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation. Commission staff believes that SBS Entities to undertake this agreement as part of the written trading relationship documentation each is required to enter into

2. Portfolio Reconciliation with Non-SBS Entities

Pursuant to proposed Rule 15Fi-3(b), each SBS Entity would be required to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation for all security-based swaps (other than security-based swaps that will be cleared by a clearing agency) in which its counterparty is not an SBS Entity.¹⁵ In calculating the burden of performing the portfolio reconciliations required by these policies and procedures, staff preliminarily estimates that (1) there are currently 13,082 market participants in security-based swaps who will not be required to register as SBS Entities,¹⁶ and (2) each SBS Entity will have an average of approximately 350 of these non-SBS Entity market participants as counterparties.¹⁷ Further, we preliminarily believe that reconciliations with these parties will be conducted on a quarterly basis for 10% of these portfolios (*i.e.*, portfolios with more than 100 uncleared security-based swaps), and on an annual basis for the remaining 90% of these portfolios (*i.e.*, portfolios that do not involve 100 or more uncleared security-based swaps). Accordingly, of the estimated 350 security-based swap portfolios that an SBS Entity maintains with non-SBS Entities, approximately 90% (or 315) will require only one portfolio reconciliation each year (for a total of 315 annual reconciliations), and 10% (or 35) will require quarterly portfolio reconciliations (for a total of 140 quarterly reconciliations), resulting in a total of 455 portfolio reconciliations per SBS Entity per year.

We further estimate that each portfolio reconciliation between an SBS Entity and a non-SBS Entity will require an average of 30 minutes to complete (which is the combined estimate for both counterparties).¹⁸ **Using these figures, the Commission preliminarily estimates that compliance with proposed Rule 15Fi-3(b), as it relates to conducting portfolio reconciliations with non-SBS Entities, will impose an annual hourly burden of approximately 227.5 hours for each of the estimated 55 SBS Entity respondents, for an estimated average annual burden of approximately 12,512.5 hours in the aggregate.**

3. Establishing, Maintaining, and Enforcing Written Policies and Procedures (Dual SEC/CFTC Entities)

Proposed Rule 15Fi-3 also contains policies and procedures requirements applicable to SBS Entities in connection with engaging in portfolio reconciliation with both SBS Entities and other counterparties. As previously noted, Commission staff estimates that of the estimated 55

with its counterparties as a result of proposed Rule 15Fi-5. Thus, the estimate here does not account for this burden, which is instead assumed to form part of the burden of complying with Rule 15Fi-5.

¹⁵ The estimated hourly burden for preparing these policies and procedures is discussed below.

¹⁶ In the Economic Analysis in the Risk Mitigation Proposing Release, the Commission estimated that there are approximately 13,137 market participants in the security-based swap market. *See* Risk Mitigation Proposing Release, 84 FR at 4651. Subtracting the estimated 55 SBS Entities from this figure results in an estimated 13,082 non-SBS Entities.

¹⁷ This estimate is based upon the assumption that each non-SBS Entity market participant will do business with, on average, between one or two SBS Entities and is calculated as follows: ((13,082 non-SBS Entity market participants/55 SBS Entities) x 1.5 SBS Entities per non-SBS market participants) = approximately 350 non-SBS Entity counterparties per SBS Entity.

¹⁸ This figure is identical to the estimate used for reconciliations between two SBS Entities (before dividing by one-half to avoid double-counting).

persons that may register with the Commission as SBS Entities, approximately 35 will be dually-registered with the CFTC as Swap Entities.¹⁹ In addition, and as we previously noted, the CFTC’s adopted final rules on portfolio reconciliation written policies and procedures are substantively identical to those proposed by Rule 15Fi-3. Accordingly, these entities are already required to establish, maintain, and follow written policies and procedures as they relate to the reconciliation of their swap portfolios, and these policies and procedures would be expected to be largely consistent with those that would be required with respect to their security-based swap portfolios. Assuming that these existing policies and procedures would simply need to be amended to apply to security-based swap transactions upon adoption of proposed Rule 15Fi-3, we preliminarily estimate that the initial burden of revising these policies and procedures would be one hour per respondent (or .33 hours on a three-year annualized basis) for each of the 35 dually-registered SBS Entities, for an estimated one-time initial burden of 35 hours in the aggregate (or 11.67 hours on a three-year annualized basis). Once these policies and procedures are established, we believe that that it will take an average of 40 hours annually to revise and maintain these policies and procedures per respondent,²⁰ for an estimated average annual burden of 1,400 hours in the aggregate for all 35 respondents.²¹ **Combining the initial and annual burdens associated with creating and updating the required policies and procedures results in a total estimated average annual burden of 1,411.67 hours in the aggregate for all of the estimated 35 respondents that may be registered with both the SEC and CFTC.**

4. Establishing, Maintaining, and Enforcing Written Policies and Procedures (SEC-Only Entities)

With respect to the remaining 20 SBS Entities that will not be dually-registered with the CFTC, staff preliminarily estimates, based on prior estimates in earlier Dodd-Frank rulemakings, that these policies and procedures would require an average of 80 hours per non-dually-registered respondent to initially prepare and implement (or 26.67 hours on a three-year annualized basis) for each of the 20 Commission-only SBS Entities, for an estimated one-time initial burden of 1,600 hours in the aggregate (or 533.33 hours on a three year-annualized basis).²² Once these policies and procedures are established, we believe that that it will take an average of 40 hours annually to revise and maintain these policies and procedures per respondent, for an estimated average annual burden of 800 hours in the aggregate for all 20

¹⁹ See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30098 (May 13, 2016) (“Business Conduct Standards Adopting Release”).

²⁰ Although dually-registered SBS Entities would technically need to revise and maintain their policies and procedures to ensure compliance with both the Commission’s and CFTC’s rules, we have preliminarily decided to conservatively assume that all of the estimated hours would be incurred in connection with compliance with the collection of information associated with proposed Rule 15Fi-3.

²¹ This estimate is based on Commission staff discussions with market participants and is calculated as follows: [((Compliance Attorney at 20 hours) + (Director of Compliance at 10 hours) + (General Counsel at 10 hours))] = 40 hours per SBS Entity. See Trade Acknowledgment and Verification of Security-Based Swap Transactions, Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39807, 39831 n. 243 (June 17, 2016) (“Trade Acknowledgment and Verification Adopting Release”).

²² This estimate is based on Commission staff discussions with market participants and is calculated as follows: [((Compliance Attorney at 40 hours) + (Director of Compliance at 20 hours) + (Deputy General Counsel at 20 hours))] = 80 hours per SBS Entity. See Trade Acknowledgment and Verification Proposing Release, 81 FR at 39807, 39831 n. 242.

respondents.²³ **Combining the initial and annual burdens associated with creating and updating the required policies and procedures results in a total estimated average annual burden of 1,333.33 hours in the aggregate for all 20 respondents that may be registered only with the SEC.**

5. Reporting of Certain Valuation Disputes

Proposed Rule 15Fi-3(c) would require each SBS Entity to promptly notify the Commission (and any applicable prudential regulator for an SBS Entity that is also a bank), in a form and manner acceptable to the Commission, of any security-based swap valuation dispute in excess of \$20,000,000 (or its equivalent in any other currency) if not resolved within a prescribed time period. In the Risk Mitigation Proposing Release, the Commission noted that the rule was designed to provide SBS Entities with flexibility to determine the most efficient and cost-effective form and manner of making such submissions, so long as it is deemed to be acceptable by the Commission.²⁴ Accordingly, Commission staff preliminarily does not expect there to be any initial burden of designing a system for submitting these notices. Staff also preliminarily believes that the associated ongoing hourly burden of preparing and submitting such notices would be minimal. In addition, until SBS Entities are registered with the Commission, it is difficult for us to determine the typical number of valuation disputes meeting the applicable thresholds that SBS Entities would be required to submit on an annual basis. **As such, Commission staff preliminarily estimates that each of the 55 SBS Entity respondents will spend on average of 24 hours each year complying with this requirement, for an estimated average annual burden of 1,320 hours in the aggregate.**

B. Proposed Rule 15Fi-4: Portfolio Compression

1. Conducting Bilateral Offsets and Portfolio Compression

In addition, respondents will incur additional hourly burdens as they undertake bilateral offsets and portfolio compression exercises consistent with these written policies and procedures. As noted above staff believes that each of the 55 estimated SBS Entities will be counterparty to an average of 18 other SBS Entities and 350 non-SBS Entities, for a total of 368 counterparties. For purposes of conducting bilateral offsets and portfolio compression exercises, we preliminarily estimate that (1) each SBS Entity will have an average of one set of security-based swaps that are eligible for annual bilateral offset with each of these 368 counterparties, (2) each SBS Entity will conduct an annual bilateral compression exercise with one-third, or six of its 18 SBS Entity counterparties, (3) each SBS Entity will conduct an annual bilateral compression exercise with each of its 350 non-SBS Entity counterparties, and (4) each SBS Entity will engage in multilateral compression exercises at an average rate of 12 exercises per year.

Commission staff also preliminarily believes that each bilateral offset and portfolio compression exercise is likely to be conducted through an automated process. As a result, we believe that (1) each bilateral offset will require on average five minutes of respondent time to complete with each of the 350 non-SBS Entity counterparties, (2) each bilateral offset will require on average 2.5 minutes of respondent time to complete with each of the 18 SBS Entity

²³ See *supra* note 22.

²⁴ See Risk Mitigation Proposing Release, 84 FR at 4621 n. 47, 4643.

counterparties,²⁵ (3) each bilateral compression will require an average of 15 minutes of respondent time to complete with each of the 350 non-SBS Entity counterparties, (4) each bilateral compression will require an average of 7.5 minutes with each of the six SBS Entity counterparties,²⁶ and (5) each multilateral compression exercise will require an average of 30 minutes of respondent time to complete 12 times annually. In each of those hourly burdens, the figure used is the combined estimate for both counterparties. **Accordingly, the Commission estimates the average annual hourly burden for these activities to be 124.16 hours for each of the 55 SBS Entity respondents, for an estimated average annual burden of 6,828.8 hours in the aggregate.**

2. Establishing, Maintaining, and Enforcing Written Policies and Procedures (Dual SEC/CFTC Entities)

As previously noted, the approximately 35 SBS Entities that will be dually-registered with the CFTC as Swap Entities are already required to establish, maintain, and follow relevant written policies and procedures related to bilateral offsets and portfolio compression exercises involving their swap portfolios, and these policies and procedures would be expected to be largely consistent with those that would be required with respect to their security-based swap portfolios. Assuming that these existing policies and procedures would simply need to be amended to apply to security-based swap transactions upon adoption of proposed Rule 15Fi-4, we preliminarily estimate that the initial burden of revising these policies and procedures would be one hour per respondent (or .33 hours on a three-year annualized basis) for each of the 35 dually-registered SBS Entities, for an estimated one-time initial burden of 35 hours in the aggregate (or 11.67 hours on a three-year annualized basis). Once these policies and procedures are established, we believe that it will take an average of 40 hours annually to revise and maintain these policies and procedures per respondent,²⁷ for an estimated average annual burden of 1,400 hours in the aggregate for all 35 respondents.²⁸ **Combining the initial and annual burdens associated with creating and updating the required policies and procedures results in a total estimated average annual burden of 1,411.67 hours in the aggregate for all of the approximately 35 respondents may be registered with both the SEC and CFTC.**

²⁵ Similar to our estimates in the context of the portfolio reconciliation requirements, because the five minute estimate is for the entire bilateral offset process, without respect to how that time is allocated between the two parties, to avoid double-counting we have divided it by one-half in the context of security-based swap portfolios between two SBS Entities, resulting in an estimate of 2.5 minutes per bilateral offset for those portfolios.

²⁶ Again, we have divided the 15 minute estimate to complete the bilateral compression exercise by one-half in the context of security-based swap portfolios between two SBS Entities, resulting in an estimate of 7.5 minutes per bilateral compression for those portfolios.

²⁷ See *supra* note 21.

²⁸ See *supra* note 22.

3. Establishing, Maintaining, and Enforcing Written Policies and Procedures (SEC-Only Entities)

With respect to the remaining 20 SBS Entities that are not dually-registered with the CFTC, Commission staff preliminarily estimates, based on prior estimates in earlier Dodd-Frank rulemakings, that these policies and procedures would require an average of 80 hours per non-dually-registered respondent to initially prepare and implement (or 26.67 hours on a three-year annualized basis) for each of the 20 Commission-only SBS Entities, for an estimated average annual burden of 1,600 hours in the aggregate (or 533.33 hours on a three-year annualized basis).²⁹ Once these policies and procedures are established, we estimate that it will take an average of 40 hours annually to revise and maintain these policies and procedures per respondent, for an estimated average annual burden of 800 hours in the aggregate for all 20 respondents. **Combining the initial and annual burdens associated with creating and updating the required policies and procedures results in a total estimated average annual burden of 1,333.33 hours in the aggregate for all 20 respondents that may be registered only with the SEC.**

C. Proposed Rule 15Fi-5: Written Trading Relationship Documentation

1. Preparation of Written Trading Relationship Documentation

As noted above, Commission staff preliminarily estimates that each SBS Entity will have 18 SBS Entity counterparties and 350 non-SBS Entity counterparties, for a total of 368 counterparties per SBS Entity. For the purposes of the underlying documentation requirements, and based on staff discussions with market participants, we understand that many SBS Entities already have in place industry-standard written trading relationship documentation that is likely to contain many of the elements required by this proposed rule. With this in mind, staff preliminarily estimates that (1) the initial burden per respondent to negotiate and draft written trading relationship documentation with 350 non-SBS Entities that is compliant with proposed Rule 15Fi-5 will be approximately 30 hours (which is the combined estimate for both counterparties), or (10,500 hours for each of the 55 estimated SBS Entities), and (2) the initial burden per respondent to negotiate and draft written trading relationship documentation with 18 SBS Entities that is compliant with proposed Rule 15Fi-5 will be approximately 15 hours (or 270 hours for each of the 55 SBS Entities).³⁰ These estimates are averages, and both account for the fact that some SBS Entities may lack appropriate documentation in certain respects and will need to enter into new documentation with counterparties, while in other cases existing documentation will need only to be modified to be brought into compliance. These estimates are further based on an assumption that, in each case, the written documentation will always include the valuation agreements set forth in proposed Rule 15Fi-5(b)(4), notwithstanding the fact that the rule only requires this information in certain circumstances.

²⁹ See *supra* note 22.

³⁰ As was the case in calculating the PRA estimates for the portfolio reconciliation and portfolio compression requirements, because the 30 hours estimate is for the entire process of negotiating and executing written trading relationship documentation, without respect to how that time is allocated between the two parties, to avoid double-counting we have divided it by one-half in the context of counterparties that are also SBS Entities, resulting in an estimate of 15 hours to negotiate and execute such documentation.

Based on these estimates and assumptions, **Commission staff estimates that the requirement to prepare written relationship documentation in accordance with proposed Rule 15Fi-5 will result in an estimated one-time initial burden of 10,770 hours for each of the 55 SBS Entity respondents, for an estimated average one-time burden of 592,350 hours in the aggregate (or 197,450 on a three-year annualized basis). The Commission also estimates that there will be little need to modify the written trading relationship documentation on an ongoing basis once it is in place, and therefore is not estimating any additional annual hourly burden for ongoing modifications.**

2. Establishing, Maintaining, and Enforcing Written Policies and Procedures

As previously noted, the approximately 35 SBS Entities that will be dually-registered with the CFTC as Swap Entities are already required to establish, maintain, and follow written policies and procedures requiring the execution of written trading relationship documentation are substantively identical to those proposed by Rule 15Fi-5. Accordingly, these 35 entities are already required to establish, maintain, and follow relevant written policies as they relate to the execution of written trading relationship documentation involving their swap portfolios, and these policies and procedures would be expected to be largely consistent with those that would be required with respect to their security-based swap portfolios. Assuming that these existing policies and procedures would simply need to be amended to apply to security-based swap transactions upon adoption of proposed Rule 15Fi-5, we preliminarily estimate that the average initial burden of revising these policies and procedures would be one hour per respondent (or .33 hours on a three-year annualized basis) for each of the 35 dually-registered SBS Entities, for an estimated one-time burden of 35 hours in the aggregate (or 11.67 hours on a three-year annualized basis). Once these policies and procedures are established, we believe that that it will take an average of 40 hours annually to revise and maintain these policies and procedures per respondent,³¹ for an estimated average annual burden of 1,400 hours in the aggregate for all 35 respondents.³² **Combining the initial and annual burdens associated with creating and updating the required policies and procedures results in a total estimated average annual burden of 1,411.67 hours in the aggregate for all of the approximately 35 respondents may be registered with both the SEC and CFTC.**

3. Establishing, Maintaining, and Enforcing Written Policies and Procedures (SEC-Only Entities)

With respect to the remaining 20 SBS Entities that are not dually-registered with the CFTC, Commission staff preliminarily estimates, based on prior estimates in earlier Dodd-Frank rulemakings, that these policies and procedures would require an average of 80 hours per non-dually-registered respondent to initially prepare and implement (or 26.67 hours on a three-year annualized basis) for each of the 20 Commission-only SBS Entities, for an estimated average annual burden of 1,600 hours in the aggregate (or 533.33 hours on a three year-annualized basis).³³ Once these policies and procedures are established, we estimate that it will take an average of 40 hours annually to revise and maintain these policies and procedures per respondent

³¹ See *supra* note 21.

³² See *supra* note 22.

³³ See *supra* note 22.

(including both dually-registered and non-dually-registered SBS Entities), for an estimated average annual burden of 800 hours in the aggregate for all 20 respondents. **Combining the initial and annual burdens associated with creating and updating the required policies and procedures results in a total estimated average annual burden of 1,333.33 hours in the aggregate for all 20 respondents that may be registered only with the SEC.**

4. Audit of Security-Based Swap Trading Relationship Documentation

With regard to having an independent auditor conduct the required periodic audit of written trading relationship documentation and the requirement to retain a record of each such audit, **staff estimates that it will take an average of 10 hours to audit an SBS Entity's documentation with each of its 368 counterparties, for a total of 3,680 hours per SBS Entity, or 202,400 hours for all 55 SBS Entity respondents.**

D. Summary

Combining the total estimates included above, **Commission staff estimates that the total estimated aggregate burden for will be 439,196.30 hours annually for all three new rules.** These estimates are derived from a number of different sources. With respect to the requirements to: (1) reconcile portfolios of security-based swaps (with both SBS and non-SBS Entities); (2) providing notices of valuation disputes; (3) participate in compression exercises and bilateral offsets (with both SBS and non-SBS Entities); (4) prepare and negotiating new written security-based swap trading relationship documentation; and (5) audit the documentation policies, the estimates were consistent with the those used by the CFTC in the course of adopting a similar rules.³⁴ For the requirement to establish, maintain, and enforce written policies and procedures, the estimates were consistent with those used in other rulemakings that contained similar requirements for SBS Entities.³⁵

13. Costs to Respondents

Other than the costs associated with the burden of information collection discussed in Item 12 above, none of the rules would impose any additional costs other on respondents. At the same time, however, Commission staff understands that some at least some respondents may choose to utilize third parties to comply with the requirements underlying the collections of information. For example, respondents may choose to utilize the services of a third party vendor to perform the reconciliations required by proposed Rule 15Fi-3 or the compression exercises contemplated by proposed Rule 15Fi-4. Once compliance with these rules is required, Commission staff would expect to have access to the information necessary to determine how many market participants will use such third party services, nor do we have data on the monetized costs of using such services. Accordingly, this PRA analysis is based entirely on hourly burdens without monetizing those costs. Because cost is likely to be a significant factor in determining whether market participants are likely to use third party vendors in these

³⁴ See Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715, 6723 (Feb. 8, 2011).

³⁵ See Trade Acknowledgment and Verification of Security-Based Swap Transactions, Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39807, 39831 (June 17, 2016).

instances, Commission staff believes that relying solely on the hourly burdens is likely to be provide a more conservative estimate.

14. Cost to Federal Government

Not applicable. The federal government does not incur a cost for this collection of information since it relates to a recordkeeping burden for the respondents.

15. Changes in Burden

Not applicable. This is the initial submission of these estimated burdens.

16. Information Collection Planned for Statistical Purposes

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

17. OMB Expiration Date Display Approval

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

18. Exceptions to Certification for 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.