

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for Rule 18a-8**  
**3235-0750**

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

**A. JUSTIFICATION**

**1. Necessity of Information Collection**

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) into law.<sup>1</sup> Section 764 of the Dodd-Frank Act added section 15F to the Securities Exchange Act of 1934 (the “Exchange Act”), which provides that the Commission shall adopt rules governing recordkeeping and reporting for security-based swap dealers (“SBSDs”) and major security-based swap participants (“MSBSPs”).<sup>2</sup> More specifically, section 15F(f)(1)(A) provides that SBSDs and MSBSPs shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the SBSD or MSBSP.<sup>3</sup>

Accordingly, on September 19, 2019, the Commission adopted amendments to its recordkeeping and reporting rules for broker-dealers as well as new recordkeeping and reporting rules for SBSDs and MSBSPs (the “SBS Recordkeeping Release”).<sup>4</sup> More specifically, new Exchange Act Rule 18a-8, as adopted, specifies the circumstances under which stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs must notify the Commission about its financial or operational condition, as well as the form that the notice must take.<sup>5</sup> Proposed Rule 18a-8 is modeled on Exchange Act Rule 17a-11, as adopted, which applies to broker-dealers, but Rule 18a-8 does not include a parallel requirement for every requirement in Rule 17a-11 because some of the Rule 17a-11 notices relate to calculations that would not be relevant to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.<sup>6</sup>

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<sup>1</sup> See *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, Public Law 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> See 15 U.S.C. 78o-10.

<sup>3</sup> See 15 U.S.C. 78o-10(f)(1)(A).

<sup>4</sup> See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Final Rules*, Exchange Act Release No. 87005 (Sept. 19, 2019), 84 FR 68550 (Dec. 16, 2019).

<sup>5</sup> See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Final Rules*, Exchange Act Release No. 87005 (Sept. 19, 2019), 84 FR 68550 (Dec. 16, 2019).

<sup>6</sup> See, e.g., 17 CFR 240.17a-11(b)(2) and (c)(1).

Proposed Rule 18a-8 establishes a number of new collections of information. The table below provides a summary of the provisions adopted as part of rule 18a-8 and indicates to which type of entity each provision applies.<sup>7</sup>

	Model stand-alone SBSDs	Non-model stand-alone SBSDs	Bank SBSDs	Stand-alone MSBSPs
Net capital below minimum	Rule 18a-8(a)(1)(i)	Rule 18a-8(a)(1)(i)		
Tentative net capital below minimum	Rule 18a-8(a)(1)(ii)			
Tangible net worth below minimum				Rule 18a-8(a)(2)
Early warning of net capital	Rule 18a-8(b)(1)	Rule 18a-8(b)(1)		
Early warning of tentative net capital	Rule 18a-8(b)(2)			
Early warning of tangible net worth				Rule 18a-8(b)(3)
Backtesting exception	Rule 18a-8(b)(4)			
Notice of adjustment of reported capital category			Rule 18a-8(c)	
Failure to make and keep current books and records	Rule 18a-8(d)	Rule 18a-8(d)	Rule 18a-8(d)	Rule 18a-8(d)
Material weakness	Rule 18a-8(e)	Rule 18a-8(e)		
Failure to make a required reserve deposit	Rule 18a-8(g)	Rule 18a-8(g)	Rule 18a-8(g)	

## 2. Purpose and Use of the Information Collection

The information obtained under Rule 18a-8 is used to monitor the financial and operational condition of stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs. This information alerts the Commission of the need to increase surveillance of the firm's financial and operational condition. No similar information is already available to use or modify for purposes of complying with Rule 18a-8 because the disclosures required by the rule are unobtainable until the early warning mechanisms are triggered. Only the most up-to-date information will help the Commission monitor stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs experiencing financial or operational difficulties.

## 3. Consideration Given to Information Technology

Under paragraph (h) of Rule 18a-8, as adopted, firms are required to give or transmit notices required by Rule 18a-8 to the principal office of the Commission in Washington, DC and the regional office of the Commission for the region in which the SBSD or MSBSP has its principal place of business. The Commission has elected to permit that specified notices required by Rule 18a-8, as adopted, be submitted to an email address provided on the Commission's website. Additionally, reports required by paragraphs (d) and (e)(2) of Rule 18a-8, as adopted, may be transmitted by overnight delivery.

<sup>7</sup> See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Final Rules*, Exchange Act Release No. 87005 (Sept. 19, 2019), 84 FR 68550 (Dec. 16, 2019).

#### **4. Duplication**

Duplication of information is not a concern because the reporting requirements are only applicable to those stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs that trigger specified early warning mechanisms set forth in Rule 18a-8. The Commission is not aware of other sources of such information (for example, another federal regulatory agency), and given the nature of the notification requirements and the Commission's need to receive timely notice of the events specified in the rule, reliance on another source for the information would undermine the Commission's ability to effectively regulate stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs. Consequently, to the extent that any duplication, to the extent it exists, would be warranted.

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

Based on feedback from industry participants about the security-based swap market, entities that would qualify as SBSDs or MSBSPs will likely exceed the thresholds defining "small entities".<sup>8</sup> Thus, it is unlikely that the requirements under proposed new Rule 18a-8 would have a significant economic impact on a small entity.

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

In the absence of Rule 18a-8, the Commission and, if applicable, the CFTC, might not be promptly alerted to a stand-alone SBS, stand-alone MSBSP, bank SBS, or bank MSBSP's financial or operational problems.

#### **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.<sup>9</sup> The Commission received no comments regarding the collection of information requirements.

#### **9. Payment or Gift**

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<sup>8</sup> Section 601(b) of the Regulatory Flexibility Act ("RFA") defines the term "small entity." The statute, however, permits agencies to formulate their own definitions. The Commission has adopted definitions for the term "small entity" for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in 17 CFR 240.0-10. See Statement of Management on Internal Accounting Control, Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982).

<sup>9</sup> *See Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers; Proposed Rule*, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25193 (May 2, 2014).

No payments or gifts were provided to respondents.

**10. Confidentiality**

The reports required by Rule 18a-8 are available only to the staff of the Commission and if applicable, the CFTC. 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)(8)), the Commission generally would not publish or make available to any person notices or reports received pursuant to Rule 18a-8. The Commission believes that information obtained under Rule 18a-8 would relate to a condition report prepared for the use of the Commission and other federal governmental authorities responsible for the regulation or supervision of stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.

**11. Sensitive Questions**

No information of a sensitive nature will be required under this collection of information. The agency has determined that neither a PIA nor a SORN are required with the collection of information

**12. Burden of Information Collection**

Rule 18a–8 would require non-broker-dealer SBSDs and non-broker-dealer MSBSPs to notify the Commission of certain indicia of their financial condition.<sup>10</sup>

The Commission estimates that each Rule 18a-8 notice would take approximately 55 minutes to prepare and file, in contrast to its estimate that a Rule 17a-11 notice would take one hour to prepare and file, because stand-alone SBSDs and stand-alone MSBSPs do not have a DEA with which to file a copy of the Rule 18a-8 notice and bank SBSDs and bank MSBSPs are not required to file the Rule 18a-8 notice with their prudential regulator.

The Commission estimates that it would receive approximately five Rule 18a-8 notices per year, based on the substantially smaller pool of possible respondents, as compared with Rule 17a-11. Therefore, the Commission estimates that Rule 18a-8 would result in **an industry-wide annual burden of 4.6 hours per year (including the first year).**<sup>11</sup> These burdens are reporting burdens.

Summary of Hourly Burdens										
		A.	B.	C.	D.	E.	F.	G.		

<sup>10</sup> See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Final Rules*, Exchange Act Release No. 87005 (Sept. 19, 2019), 84 FR 68550 (Dec. 16, 2019). See also section 1 above.

<sup>11</sup> 55 minutes / 60 minutes = .92 hours per notice x 5 notices per year = 4.6 hours per year.

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%]
Rule 18a-8 Notice	Reporting	5	1	0.00	0.00	0.92	0.92	0.92	4.60	0.00
<b>TOTAL HOURLY BURDEN FOR ALL RESPONDENTS</b>									<b>4.60</b>	

**13. Costs to Respondents**

The Commission does not anticipate that proposed Rule 18a-8 will impose capital and start-up costs or operation, maintenance, and purchase of services costs.

**14. Costs to Federal Government**

Rule 18a-7 is not expected to result in costs to the federal government due to contracting, information technology, development, hiring one or more new employees, or reallocating existing employees.

**15. Changes in Burden**

There is no change in the 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 PRA 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.