

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for Rule 18a-9**  
**3235-0752**

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 reporting and recordkeeping for security-based swap dealers (“SBSDs”) and major security-based swap participants (“MSBSPs”).<sup>2</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>3</sup> The new rules included Exchange Act Rule 18a-9, which is modeled on Exchange Act Rule 17a-13 and establishes a securities count program for SBSDs not dually registered as a broker-dealer or regulated by a prudential regulator (“stand-alone SBSDs”). Rule 18a-9 requires stand-alone SBSDs to examine and count the securities they physically hold, account for the securities that are subject to their control and direction but are not in their physical possession, verify the locations of securities under certain circumstances, and compare the results of the count and verification with their records.<sup>4</sup> Stand-alone SBSDs are required to perform a securities count each quarter, either as of a date certain or on a cyclical basis. Rule 18a-9, as adopted, does not apply to SBSDs or MSBSPs regulated by a prudential regulator, or MSBSPs not dually registered as a broker-dealer or regulated by a prudential regulator. Rule 18a-9, as adopted, requires stand-alone SBSDs to note any discrepancies between the count and the firm’s records, and to record in the firm’s record any discrepancies that remain unresolved seven business days after the date of the examination, count, and verification.<sup>5</sup>

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

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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 *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Final Rule*, Exchange Act Release No. 87005 (Sep. 19, 2019), 84 FR 68550 (Dec. 16, 2019).

<sup>4</sup> See Rule 18a-9, as adopted.

<sup>5</sup> See Rule 18a-9, as adopted.

The information is used as an inventory control device to monitor a stand-alone SBSB's ability to account for all securities held in transfer, in transit, pledged, loaned, borrowed, deposited, or otherwise subject to the firm's control or direction. Any discrepancies between the security count and the SBSB's records alert the Commission to those firms experiencing back-office operational issues. Without Rule 18a-9, the Commission would lose this important warning device to inform it when a stand-alone SBSB might be having problems accounting for the securities for which it is responsible.

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

Since Rule 18a-9, as adopted, provides that firms must reconcile their books and records with their physical inventory and inventory in transit, improved information technology is not expected to reduce the burden.

### **4. Duplication**

No duplication is apparent because stand-alone SBSBs are currently unregulated entities and do not have SROs that require similar counts of securities.

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

Based on feedback from industry participants about the security-based swap market, entities that qualify as SBSBs or MSBSPs will likely exceed the thresholds defining "small entities".<sup>6</sup> Thus, it is unlikely that the requirements under Rule 18a-9, as adopted, will have a significant economic impact on a small entity.

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

If security counts were conducted less frequently, investors would not have the protection that the federal securities laws require. With regard to broker-dealers, between 1967 and 1970, a number of broker-dealers became insolvent because of their inability to account for the securities that their records showed they possessed or controlled. The Commission believes that the risk of insolvency due to inability to account for securities is similarly applicable to stand-alone SBSBs.

### **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**

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<sup>6</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).

The Commission requested comment on the collection of information requirements in the proposing release in April 2014.<sup>7</sup> The Commission did not receive comments regarding the collection of information requirements.

## **9. Payment or Gift**

No payments or gifts are provided to respondents.

## **10. Confidentiality**

Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

## **11. Sensitive Questions**

The information collection does not collect personally identifiable information.

## **12. Burden of Information Collection**

Rule 18a–9, as adopted, which is modeled on Rule 17a–13, requires stand-alone SBSs to establish a securities count program.<sup>8</sup> The Commission estimates that Rule 18a–9, as adopted, imposes an initial burden of 25 hours per firm. The records required by Rule 18a–9, as adopted, should already be recorded by the systems implemented under Exchange Act Rules 18a–5 and 18a–6, as adopted, and accordingly, the resulting initial burden is largely already accounted for under these rules.

The Commission estimates that Rule 18a–9, as adopted, imposes a burden of 25 hours per securities count, resulting in an ongoing annual burden of 100 hours per stand-alone SBS,<sup>9</sup> based on the current approved Paperwork Reduction Act estimate for Rule 17a–13 which estimates a securities count program imposes an average ongoing cost of 100 hours per year on a broker-dealer.<sup>10</sup>

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<sup>7</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).

<sup>8</sup> See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Final Rule*, Exchange Act Release No. 87005 (Sep. 19, 2019), 84 FR 68550 (Dec. 16, 2019).

<sup>9</sup> 4 securities counts/year \* 25 hours/securities count = 100 hours/year.

<sup>10</sup> See Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–13* (Feb. 26, 2014), available at <http://www.reginfo.gov/public/do/DownloadDocument?objectID=43812501>.

The Commission estimates that there are six stand-alone SBSBs, resulting in an estimated industry-wide initial burden of 150 hours<sup>11</sup> and an ongoing burden of 600 hours per year.<sup>12</sup> **Over a three year period, the total industry burden is expected to be 1,950 hours,<sup>13</sup> or 650 hours per year when annualized.**<sup>14</sup> These burdens are recordkeeping burdens.

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%]
Securities Count Program	Recordkeeping	6	4	6.25	2.08	25.00	27.08	108.33	650.00	0.00
TOTAL HOURLY BURDEN FOR ALL RESPONDENTS									650.00	

### 13. Costs to Respondents

The Commission does not anticipate that Rule 18a-9, as adopted, imposes capital and start-up costs or operation, maintenance, and purchase of services costs.

### 14. Costs to Federal Government

Rule 18a-9, as adopted, 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

The estimated burdens have decreased as a result of the burden estimate being revised to reflect a reduction in the number of respondents. The Commission has reduced the number of estimated respondents from the number estimated at the proposing stage because of certain amendments to Rule 18a-10. Rule 18a-10 sets forth an alternative compliance mechanism for security-based swap dealers that are registered as swap dealers with the Commodity Futures Trading Commission (“CFTC”). The Commission amended Rule 18a-10 to permit stand-alone SBSBs that are registered as swap dealers with the CFTC to comply with the reporting requirements of the CFTC in lieu of Rule 18a-7. For the purposes of this Paperwork Reduction Act analysis, the Commission estimates that three security-based swap dealers will avail

<sup>11</sup> 6 stand-alone SBSBs x 25 hours = 150 hours per year.

<sup>12</sup> 6 stand-alone SBSBs x 100 hours = 600 hours per year.

<sup>13</sup> (150 hours + 600 hours in first year) + 600 hours in second year + 600 hours in third year = 1,950 hours.

<sup>14</sup> 1,950 hours / 3 years = 650 hours per year.

themselves of the alternative compliance mechanism in Rule 18a-10. The estimated number of SBSB respondents has been reduced by this number to reflect this.

The table below summarizes the change in the estimated burden.

Summary of Changes in Burden Hours				
Name of Information Collection Previously Reviewed	Annual Industry Burden	Annual Industry Burden Previously Reviewed	Change in Burden	Reason for Change in Burden
Securities Account Program	650	975	(325)	Reduced estimate for the number of respondents as a result of amendments to Rule 18a-10

**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.