

**SUPPORTING STATEMENT for the Paperwork Reduction Act Information Collection Submission for Rule 18a-10 – Alternative compliance mechanism for security-based swap dealers that are registered as swap dealers and have limited security-based swap activities.**

**Final Request for New OMB Number (3235-0785)**

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 18a-10, as originally adopted, provides an alternative compliance mechanism pursuant to which stand-alone security-based swap dealers (“SBSDs”)<sup>1</sup> registered as a swap dealer that predominantly engages in a swaps business, and that meets certain conditions set forth in the rule, may elect to comply with the capital, margin, and segregation requirements of the Commodity Exchange Act (“CEA”) and the U.S. Commodity Futures Trading Commission’s (“CFTC”) rules in lieu of complying with Rules 18a-1, 18a-3, and 18a-4, as adopted.<sup>2</sup> Rule 18a-10 requires the firm to provide a written disclosure to its counterparties after it begins operating pursuant to the rule. The disclosure requirement is designed to alert the counterparty that the firm is not complying with these Commission rules notwithstanding the fact that the firm is registered with the Commission as an SBSB. This will provide the counterparty with the opportunity to assess the implications of transacting with the SBSB under these circumstances.

Furthermore, Rule 18a-10 requires the firm to immediately notify the Commission and the CFTC in writing if it fails to meet a condition in the rule. This notice – by immediately alerting the Commission and the CFTC of the firm’s status – will provide the agencies with the opportunity to promptly evaluate the situation and coordinate any regulatory responses such as increased monitoring of the firm.

**Adoption of Rule 18a-10**

On June 21, 2019, in accordance with Section 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”),<sup>3</sup> which added section 15F to

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<sup>1</sup> The alternative compliance mechanism in Rule 18a-10, as adopted, is not available to nonbank SBSBs that are registered as either a broker-dealer or an OTC derivatives dealer. Consequently, term “stand-alone SBSB,” in the context of discussing the alternative compliance mechanism, refers to a stand-alone SBSB that is not also registered as an OTC derivatives dealer.

<sup>2</sup> *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, Exchange Act Release No. 86175 (Jun. 21, 2019), 84 FR 43872 (Aug. 22, 2019).

<sup>3</sup> *See Dodd-Frank Wall Street Reform and Consumer Protection Act*, Public Law 111-203, 124 Stat. 1376 (2010).

the Securities Exchange Act of 1934 (the “Exchange Act”),<sup>4</sup> the Securities and Exchange Commission (the “Commission”) adopted Rule 18a-10. The Commission did not propose Rule 18a-10, and Rule 18a-10 was not proposed in connection with the proposing release for Rules 18a-1, 18a-3, or 18a-4. Instead, the adoption of Rule 18a-10 followed from comments received in connection with the proposal of other rules, including Rules 18a-1, 18a-3, and 18a-4, suggesting that the Commission provide an alternative compliance mechanism for SBSDs that are registered as swap dealers that predominantly engage in a swaps business to permit such entities to comply with the rules of the CFTC applicable to swap dealers.

Following the adoption of Rule 18a-10, the burdens associated with the Rule were included in the Collection of Information in Rule 18a-3 (OMB No. 3235-0702),<sup>5</sup> and were approved on November 19, 2019.<sup>6</sup>

The compliance date for Rules 18a-1, 18a-3, and 18a-4, is October, 6, 2021.<sup>7</sup> As a result, in order to use the alternative compliance mechanism set forth in Rule 18a-10 with respect to Rules 18a-1, 18a-3, and 18a-4, Rule 18a-10 would have the same compliance date. Because the compliance date has not yet occurred, the information collection burdens associated with these rules, including the information collection burdens associated with Rule 18a-10 that were previously submitted, reviewed and approved, have not yet begun.

### **September 2019 Amendments to Rule 18a-10**

On September 19, 2019, the Commission adopted amendments to Rule 18a-10.<sup>8</sup> Specifically, the Commission amended the Rule 18a-10 to reference recordkeeping and reporting requirements of the CEA and the CFTC’s rules, as well as Commission Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 in order to add these requirements to the full alternative compliance mechanism described above. Consequently, these amendments will permit firms that operate under Rule 18a-10 to elect to comply with the recordkeeping and reporting requirements of the CEA and the CFTC’s rules in lieu of complying with Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9, and will also require SBSDs to comply with the requirement to provide a written disclosure to its counterparties after it begins operating pursuant to the rule indicating that the SBSD is complying with the applicable recordkeeping and reporting requirements of the CEA and the CFTC’s rules in lieu of complying with Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9.

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<sup>4</sup> See 15 U.S.C. 78o-10(e)(2)(B).

<sup>5</sup> See 17 CFR 240.18a-3. See also *Supporting Statement for Paperwork Reduction Act Information Collection Submission for Rule 18a-3 – Non-cleared security-based swap margin requirements for security-based swap dealers and major security-based swap participants for which there is not a prudential regulator*, available at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201907-3235-017](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201907-3235-017).

<sup>6</sup> See [OMB Control Number History \(reginfo.gov\)](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201907-3235-017).

<sup>7</sup> See <https://www.sec.gov/page/key-dates-registration-security-based-swap-dealers-and-major-security-based-swap-participants>

<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).

The Commission also added new paragraph (b)(4) to Rule 18a-10 which requires SBSBs operating under Rule 18a-10 to simultaneously notify the Commission whenever the SBSB is required to notify the CFTC concerning the SBSB's capital, books and records, liquidity, margin operations, or segregation operations.

The Commission also amended Rule 18a-10 to add certain clarifying language to provide that a firm must treat a security-based swap or collateral related to a security-based swap *as a swap or collateral related to a security-based swap, as applicable*, if the CEA or the CFTC's rules do not specifically address a security-based swap or collateral related to a security-based swap.

Similar to Rules 18a-1, 18a-3, and 18a-4, as discussed above, the compliance date for Rules 18a-5 through 18a-9 is October 6, 2021.<sup>9</sup> As a result, the compliance date for Rule 18a-10, including the amendments described above, is October 6, 2021.

### **Revision to Information Collection and Request for New OMB Number**

The Commission revised the estimated burdens for the information collection in Rule 18a-10 as a result of the amendments, described above, that were adopted in connection with the adopting or recordkeeping and reporting requirements for security-based swap dealers and major security-based swap participants.<sup>10</sup> The Commission also requested a separate OMB number for Rule 18a-10 in order to separate the burdens associated with Rule 18a-10 from Rule 18a-3 and to include the revised burden estimates associated with the amendments to Rule 18a-10 described above.

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

Information collection under Rule 18a-10, as adopted is integral to the Commission's financial responsibility program for certain stand-alone SBSBs. The disclosure requirement under Rule 18a-10, as adopted, is designed to alert the counterparty that the firm is not complying with these Commission rules notwithstanding the fact that the firm is registered with the Commission as an SBSB. This will provide the counterparty with the opportunity to assess the implications of transacting with the SBSB under these circumstances.

Rule 18a-10 requires notification to the Commission if the SBSB chooses the alternative compliance mechanism described in the rule. The Commission believes stand-alone SBSBs that meet the conditions of Rule 18a-10 should be permitted to adhere to capital, margin, and segregation requirements of the CEA and the CFTC's rules (which, potentially, could include a bank-like capital standard) because, among other reasons, they will be predominantly engaging in a swaps business and, therefore, the CFTC will have a heightened regulatory interest in these

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<sup>9</sup> See <https://www.sec.gov/page/key-dates-registration-security-based-swap-dealers-and-major-security-based-swap-participants>

<sup>10</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).

firms as compared to the Commission's regulatory interest.

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

The information collections will not require that respondents use any specific information technology system either to prepare or submit information collections under Rule 18a-10.

### **4. Duplication**

This information collection does not duplicate any existing information collection.

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

The information collections required under Rule 18a-10 would not place burdens on small entities. The stand-alone SBSBs subject to the information collections under the rule are not expected to be small entities.

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

If the required information collections are not conducted or are conducted less frequently, the protection afforded to counterparties and the U.S. financial system would be diminished.

### **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 did not propose a collection of information with respect to Rule 18a-10 because the Commission did not propose Rule 18a-10, as adopted. The Commission also did not propose amendments to Rule 18a-10. Instead, the Commission adopted Rule 18a-10, and adopted the amendments discussed in this supporting statement, in response to comments made relating to other proposed rules urging the Commission to harmonize its requirements with those of the Commodity Futures Trading Commission regarding swap dealers.<sup>11</sup>

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

No payment or gift is provided to respondents.

### **10. Confidentiality**

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<sup>11</sup> See *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, Exchange Act Release No. 86175 (Jun. 21, 2019), 84 FR 43872 (Aug. 22, 2019); See also, *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).

The information collected by the Commission under Rule 18a-10 is kept confidential to the extent permitted by the Freedom of Information Act (5 U.S.C. § 552 *et seq.*).

## 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 in connection with the collection of information.

## 12. Burden of Information Collection

Rule 18a-10 contains an alternative compliance mechanism pursuant to which a stand-alone SBSB that is registered as a swap dealer and predominantly engages in a swaps business may elect to comply with the capital, margin, segregation, and recordkeeping and reporting requirements of the CEA and the CFTC's rules in lieu of complying with Commission Rules 18a-1 and 18a-3 through 18a-9. The Commission estimates the following hour burdens for the information collection in Rule 18a-10.

### Develop Disclosure Language (Rule 18a-10(b)(2))

The Commission estimates paperwork burden associated with developing new disclosure language under paragraph (b)(2) of Rule 18a-10 will require each of the 3 stand-alone SBSBs to spend 5 hours of in-house counsel time. **This would create a total one-time industry burden of 15 hours, or 5 hours on an annualized basis.**<sup>12</sup> This estimate assumes little or no reliance on standardized disclosure language. This estimate was previously reviewed and approved and has not changed from its initial estimate.

### Incorporate Disclosure Language (Rule 18a-10(b)(2))

Based on previous experience, the Commission staff estimates that the average SBSB will have approximately 1,000 counterparties at any given time and that the cost of incorporating new disclosure language into the trading documentation of an average SBSB would require 10 hours of in-house counsel time, for a total of 10,000 hours per stand-alone SBSB and **approximately 30,000 hours for all 3 stand-alone SBSBs, or 10,000 hours**<sup>13</sup> **on an annualized basis.**<sup>14</sup> This estimate was previously reviewed and approved and has not changed from its initial estimate.

### Update Disclosures (Rule 18a-10(b)(2))

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<sup>12</sup> 3 stand-alone SBSBs x 5 in-house counsel hours = 15 hours. Annualized, the hour burden would be 5 hours industry-wide (15 hours/3 years = 5 hours) and 1.67 per stand-alone SBSB (5 hours/3 stand-alone SBSBs = 1.67).

<sup>13</sup> This number (10,000) is different from the number that is represented in the summary of hourly burden chart (9,990) because of a different order of operations and rounding in arriving at the final hour burden.

<sup>14</sup> 3 stand-alone SBSBs x 10 hours x 1,000 counterparties = 30,000. Annualized, this hour burden would be 10,000 hours industry wide (30,000 hours/3 years = 10,000 hours) and 3,333.33 hours per stand-alone SBSB (10,000 hours/3 stand-alone SBSB = 3,333 hours).

The Commission expects that the majority of the paperwork burden associated with the new disclosure requirements under paragraph (b)(2) of Rule 18a-10, as adopted, will be experienced during the first year as language is developed. After the new disclosure language is developed and incorporated into trading documentation, the Commission believes that the ongoing burden associated with paragraph (b)(2) of Rule 18a-10 will be limited to periodically updating the disclosures. **The Commission estimates that this ongoing paperwork burden will not exceed 5 hours per stand-alone SBSB, for a total of 15 hours annually for all 3 stand-alone SBSBs.**<sup>15</sup> This estimate was previously reviewed and approved and has not changed from its initial estimate.

#### Notices (Rule 18a-10(b)(3))

Based on the number of notices currently filed by broker-dealers, the Commission staff estimates that the notice requirement of paragraph (b)(3) of Rule 18a-10 will result in annual hour burdens to stand-alone SBSBs. The Commission staff estimates that 1 stand-alone SBSB will file notice annually with the Commission. In addition, based on the estimates for similar collections of information, **the Commission staff estimates that it will take a stand-alone SBSB approximately a half hour to file this notice, resulting in an industry-wide annual hour burden of a half hour.**<sup>16</sup> This estimate was previously reviewed and approved and has not changed from its initial estimate.

#### Simultaneous Notification (Rule 18a-10(b)(4))

Based on the number of notices currently filed by broker-dealers, the Commission staff estimates that the notice requirement of paragraph (b)(3) of Rule 18a-10 will result in annual hour burdens to stand-alone SBSBs. The Commission staff estimates that annually 1 stand-alone SBSB will transmit a copy of a notice to the Commission that was submitted to the CFTC. **The Commission staff estimates that it will take a stand-alone SBSB approximately a 5 minutes for a stand-alone SBSB to provide the Commission with a copy of the notice, resulting in an industry-wide annual hour burden of a 0.083 hours.**<sup>17</sup> This estimate represents a new burden associated with amendments adopted to Rule 18a-10 in connection with the adoption of recordkeeping and reporting requirements for security-based swap dealers and major security-based swap participants.<sup>18</sup>

#### Alternative Compliance Mechanism (Rule 18a-10(d)(1) and (d)(2))

Finally, under paragraphs (d)(1) and (d)(2) of Rule 18a-10, respectively, a stand-alone SBSB can make an election to operate under the alternative compliance mechanism, during the

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<sup>15</sup> 3 stand-alone SBSBs x 5 hours = 15 hours.

<sup>16</sup> 1 stand-alone SBSB x 1 notice x 30 minutes = 30 minutes.

<sup>17</sup> 1 notice per year x (5 minutes per notice ÷ 60 minutes per hour) = 0.0833 hours.

<sup>18</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).

registration process or after the firm registers as an SBSB, by providing written notice to the Commission and the CFTC of its intent to operate pursuant to the rule. The Commission believes that in the first 3 years of the effective date of the rule that the 3 nonbank SBSBs that elect to operate under Rule 18a-10 will file the notice as part of their application process. Therefore, the Commission believes that the time it would take an entity to file a notice as part of the application process would be *de minimis* and, therefore, would not result in an hour burden for this collection of information or any collection of information associated with registering with the Commission as an SBSB. Further, since the Commission believes that the 3 nonbank SBSBs will elect to operate under the rule as part of their registration process, the Commission believes that there will be no respondents, and no paperwork hour or cost burden under the PRA associated with paragraph (d)(2) of Rule 18a-10, as adopted.

Summary of Hourly Burdens										
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
Rule 18a-10(b)(2) (Develop Disclosure Language)	Third-Party	3	1	5	1.67	0	1.67	1.67	5.01	0
Rule 18a-10(b)(2) (Incorporate Disclosure Language)	Third Party	3	1,000	10	3.333	0	3.333	3,333	10,000	0
Rule 18a-10(b)(2) (Update Disclosures)	Third Party	3	1	0	0	5	5	5	15	0
Rule 18a-10(b)(3) (Notices)	Reporting	1	1	0	0	.5	.5	.5	.5 (rounds to 1)	0
Rule 18a-10(b)(4) (Simultaneous Notification)	Reporting	1	1	0	0	0.083	0.083	0.083	0.083 (rounds to 0)	0
<b>TOTAL HOURLY BURDEN FOR ALL RESPONDENTS</b>									<b>10,021.093</b>	

### 13. Costs to Respondents

The Commission does not expect any cost burdens associated with Rule 18a-10, as adopted.

### 14. Cost to Federal Government

The staff does not anticipate this information collection to impose additional costs to the Federal Government.

### 15. Changes in Burden

There are not any changes to the estimated burdens from the proposed PRA package that was submitted in May 2021 and reviewed in 202104-3235-024.

### 16. Information Collected 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.