

**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**

**OMB No. 3235-0777**

**New Request in Connection with a Final Rule**

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”),<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

Accordingly, on December 19, 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.<sup>4</sup> The Commission adopted those rules on December 18, 2019, largely as proposed.<sup>5</sup> Specifically:

- New Rule 15Fi-3 requires SBS Entities to reconcile outstanding security-based swaps with applicable counterparties on a periodic basis.
- New Rule 15Fi-4 requires SBS Entities to engage in certain forms of portfolio compression exercises with their counterparties, as appropriate.

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<sup>1</sup> 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.

<sup>2</sup> 15 U.S.C. 78o-10(i)(1).

<sup>3</sup> 15 U.S.C. 78o-10(i)(2).

<sup>4</sup> See Risk Mitigation Techniques for Uncleared Security-Based Swaps, Exchange Act Release No. 84861 (Dec. 19, 2018), 84 FR 4614 (Feb. 15, 2019) (“Risk Mitigation Proposing Release”).

<sup>5</sup> See Risk Mitigation Techniques for Uncleared Security-Based Swaps, Exchange Act Release No. 87782 (Dec. 18, 2018), 85 FR 63594614 (Feb. 4, 2020) (“Risk Mitigation Adopting Release”).

- New Rule 15Fi-5 requires SBS Entities to execute written security-based swap trading relationship documentation with each of its counterparties prior to, or contemporaneously with, executing a security-based swap transaction, and to periodically audit the policies and procedures governing such documentation.

Each of these new rules will impose a new collection of information requirements on SBS Entities. The title of these new collections of information is, collectively, “Rules 15Fi-3 to 15Fi-5 – Risk Mitigation Techniques for Uncleared Security-Based Swaps.”<sup>6</sup>

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

### **A. New 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 new 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)

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<sup>6</sup> The Risk Mitigation Adopting Release also contains requirements that 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 or have been submitted to OMB as separate supporting statements.

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 could also serve as an indication of a widespread market disruption in cases where the Commission receives a large number of such notices from multiple firms.

#### New Rule 15Fi-4: Portfolio Compression

The portfolio compression requirements in new 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 rule also should lead to processing improvements for market participants by virtue of the fact that 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.

#### New Rule 15Fi-5: Written Trading Relationship Documentation

The information required to be contained in the underlying written trading relationship documentation pursuant to new 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**

To allow for flexibility with respect to the use and development of new technologies, the new rules do not prescribe particular forms or methods of compliance for SBS Entities. For example, Commission staff understands 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 these rules, SBS Entities would be permitted to use such platforms in connection with new Rules 15Fi-3 and 15Fi-4, so long as they comply with specific elements set forth in those rules. Similarly, although new Rule 15Fi-5 requires that an SBS Entity's trading relationship document with its counterparties be "in writing," it does not specify how the documentation is required to be memorialized, stored, or used. As a result, SBS Entities would have the discretion to allow for such trading relationship documentation 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 new rules.

#### 4. Duplication

New Rules 15Fi-3 through 15Fi-5 generally do not require the collection of duplicate information that is otherwise available in a similar form, other than under certain limited circumstances. Specifically, 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 new 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, thereby minimizing compliance burdens. 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 of the transaction. 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

Rules 15Fi-3 through 15Fi-5 impose requirements directly on SBS Entities, which are highly unlikely to satisfy the criteria for being considered a “small entity,” as described below.<sup>7</sup> Specifically, although SBS Entities are a new category of Commission registrant, it is instructive to look at other categories of intermediaries when determining whether such persons are likely to be small entities. For example, a small entity includes a broker-dealer with total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a-5(d) under the Exchange Act,<sup>8</sup> or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.<sup>9</sup>

With respect to SBS Entities, based on feedback from market participants and our information about the security-based swap markets, and consistent with the Commission’s position in prior Dodd-Frank Act rulemakings, the Commission continues to believe that (1) the types of entities that will engage in more than a de minimis amount of dealing activity involving security-based swaps—which generally would be large financial institutions—would not be “small entities,” and (2) the types of entities that may have security-based swap positions above the level required to be “major security-based swap participants” also would not be “small

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<sup>7</sup> For example, a person engaged in dealing activity in security-based swaps generally will only be required to register as an SBS dealer if over the preceding twelve months the aggregate gross notional amount of its dealing activity in security-based swaps exceeds a de minimis threshold. For credit default swaps the de minimis threshold is \$8 billion, and for other types of security-based swaps the threshold is \$400 million. See 17 CFR 240.3a71-2

<sup>8</sup> 17 CFR 240.17a-5(d).

<sup>9</sup> See 17 CFR 240.0-10(c).

entities.” Accordingly, Rules 15Fi-3 through 15Fi-5 are not likely to have a significant economic impact on a substantial number of small entities.

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

Rules 15Fi-3 through 15Fi-5 have been 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.”<sup>10</sup> 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 new 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 rules.

## **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 requested comment on the collection of information requirements in the Risk Mitigation Proposing Release in February 2019, a copy of which is attached.<sup>11</sup> Comments received on this rulemaking were posted on the Commission’s public website and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission considered all comments received prior to publishing the final rule, and explained in the Adopting Release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).<sup>12</sup>

No commenters provided feedback on the estimated cost and hour burdens set forth in the Risk Mitigation Proposing Release, so the Commission did not change its estimates in response to comments. However, in the Risk Mitigation Adopting Release the Commission did update the number of SBS Entities that it estimated to be dually registered with the CFTC as swap dealers or major swap participants in order to be consistent with the most recent estimates used in other Commission rulemakings.<sup>13</sup>

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<sup>10</sup> 15 U.S.C. 78o-10(i)(2) (emphasis added).

<sup>11</sup> See Risk Mitigation Proposing Release, 84 FR at 4648.

<sup>12</sup> See Risk Mitigation Adopting Release, 85 FR at 6381.

<sup>13</sup> See Risk Mitigation Adopting Release, 85 FR at 6383. The Commission did, however, make three changes to the rules (as compared to the Risk Mitigation Proposing Release), each of which was in response to commenters. None of those changes resulted in modifications to the estimated Paperwork Reduction Act burdens. First, the Commission adopted a single

## **9. Payment or Gift**

No payment or gift is provided to respondents.

## **10. Confidentiality**

New Rule 15Fi-3(c) requires 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. No commenters responded to that particular request.

No other information will be submitted directly to the Commission under 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**

As described in Item 10 above, new Rule 15Fi-3(c) requires an SBS Entity to promptly notify the Commission of certain valuation disputes. Commission staff is in the process of implementing this requirement and will likely request that SBS Entities filing such notices include certain contact information (including, but not limited to, a person's name, email, or phone number) in order to allow Commission staff to follow-up with the SBS Entities with any follow-up questions on the contents of the notice. Commission staff does not envision any circumstance in which a social security number would be provided pursuant to any of the collections of information.

As such, we have determined that the information collection does not constitute a system of records for purposes of the Privacy Act. Information is not retrieved by a personal identifier.

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definition of "material terms" for purposes of the portfolio reconciliation requirements in Rule 15Fi-3 that is generally consistent with the definition used in the corresponding CFTC rule. The proposal contained a bifurcated definition based on whether the security-based swap had previously been reconciled. See Risk Mitigation Adopting Release, Section II.A.1. Second, Rule 15Fi-5, unlike in the proposal, does not require an SBS Entity's written trading relationship documentation to address the allocation of any applicable regulatory reporting obligations. See Risk Mitigation Adopting Release, Section II.C.1. Both of those changes involve provisions that were included in the proposal as part of a request for comment on how such provisions could potentially help address how a security-based swap data repository may satisfy its obligation to verify the terms of each security-based swap with both counterparties to the transaction. Finally, the Commission is modifying the scope of the exception for uncleared security-based swaps in each of Rules 15Fi-3, 15Fi-4, and 15Fi-5. See Risk Mitigation Adopting Release, Sections II.A.6, II.B.3, and II.C.5.

In accordance with Section 208 of the E-Government Act of 2002, we believe that the information collection does not trigger the Privacy Impact Assessment (“PIA”) requirement.

## 12. Burden of Information Collection

Commission 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. Those estimates are identical to those included in the Risk Mitigation Proposing Release.<sup>14</sup> However, the Commission now estimates that approximately 20 entities will be dually registered with the CFTC as Swap Entities (as opposed to the 35 estimated dual registrants used in connection with the Risk Mitigation Proposing Release).<sup>15</sup> Although the total number of respondents did not change, the new estimate modifies the breakdown between SBS Entities that will already have established written policies and procedures to comply with the CFTC’s rules for Swap Entities (which are similar to the Commission’s rules), and those that will need to prepare such policies and procedures for the first time.

Accordingly, we have used this revised estimate of the number of respondents for the calculation of reporting burdens. The rules were adopted pursuant to the Commission’s authority to prescribe standards by rule or regulation, and the resulting collection of information is being categorized as a program change due to agency discretion. A summary of the estimated hourly 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)	20	0	Recordkeeping	Ongoing	1	40	40	806.67
				Initial One-Time	N/A	1	0.33	
Reconciliation Policies and Procedures (SEC Only)	35	0	Recordkeeping	Ongoing	1	40	40	2333.33
				Initial One-Time	N/A	80	26.67	

<sup>14</sup> See Risk Mitigation Adopting Release, 85 FR at 6383 nn. 209 and 210 (citing to 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).

<sup>15</sup> See *id.*

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)	20	0	Recordkeeping	Ongoing	1	40	40	806.67
				Initial One-Time	N/A	1	0.33	
Compression Policies and Procedures (SEC Only)	35	0	Recordkeeping	Ongoing	1	40	40	2333.33
				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)	20	0	Recordkeeping	Ongoing	1	40	40	806.67
				Initial One-Time	N/A	1	0.33	
Documentation Policies and Procedures (SEC Only)	35	0	Recordkeeping	Ongoing	1	40	40	2333.33
				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	
<b>TOTAL ANNUAL INDUSTRY BURDEN</b>								<b>440,381.30</b>

The rules are required by statute; however, the Commission used its discretion in proposing and adopting the rules. Accordingly, **we are classifying the new collections of information as program changes due to agency discretion.**

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

##### 1. Portfolio Reconciliation with Other SBS Entities

Under new Rule 15Fi-3(a), approximately 55 respondent SBS Entities would be required to reconcile uncleared security-based swap portfolios with other SBS Entities on a daily, weekly, or quarterly basis, depending upon the size of the portfolio. For purposes of this requirement, we 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 believe that, on average, two such portfolios will require daily reconciliation (*i.e.*, a portfolio consisting of 500 or more uncleared security-based swaps), four 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 portfolios will require quarterly reconciliation (*i.e.* a portfolio of no



more than 50 uncleared security-based swaps).<sup>16</sup> We therefore estimate that each SBS Entity will engage in an average of 760 portfolio reconciliations with other SBS Entities per year.<sup>17</sup>

We also believe that each portfolio reconciliation is likely to be conducted through an automated process.<sup>18</sup> As a result, we 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.<sup>19</sup> Using these figures, the Commission estimates that compliance with Rule 15Fi-3(a) 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**.<sup>20</sup>

## 2. Portfolio Reconciliation with Non-SBS Entities

Pursuant to Rule 15Fi-3(b), each SBS Entity is required to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation for all uncleared security-based swaps in which its counterparty is not an SBS Entity.<sup>21</sup> In calculating the burden of performing the portfolio reconciliations required by these policies and procedures, staff estimates that: (1) there are currently 13,082 market participants in

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<sup>16</sup> 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).

<sup>17</sup> This estimate uses 252 business days for purposes of the daily portfolio reconciliation requirement, which is consistent with the definition of “business day” in Rule 15Fi-1(b).

<sup>18</sup> 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.

<sup>19</sup> 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.

<sup>20</sup> 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 are likely to undertake this agreement as part of the written trading relationship documentation that they are required to enter into with their counterparties as a result of 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.

<sup>21</sup> The estimated hourly burden for preparing these policies and procedures is discussed below.

security-based swaps who will not be required to register as SBS Entities,<sup>22</sup> and (2) each SBS Entity will have an average of approximately 350 of these non-SBS Entity market participants as counterparties.<sup>23</sup> Further, we 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).<sup>24</sup> Using these figures, the Commission estimates that compliance with 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)

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 persons that may register with the Commission as SBS Entities, approximately 20 will be dually-registered with the CFTC as Swap Entities.<sup>25</sup> 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 required 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

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<sup>22</sup> In the Economic Analysis in the Risk Mitigation Adopting Release, the Commission estimated that there are approximately 13,137 market participants in the security-based swap market. See Risk Mitigation Adopting Release, 85 FR at 6393. Subtracting the estimated 55 SBS Entities from this figure results in an estimated 13,082 non-SBS Entities.

<sup>23</sup> 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.

<sup>24</sup> This figure is identical to the estimate used for reconciliations between two SBS Entities (before dividing by one-half to avoid double-counting).

<sup>25</sup> See supra note 15 and accompanying text.

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 as required by Rule 15Fi-3, we 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 20 dually-registered SBS Entities, for an estimated one-time initial burden of 35 hours in the aggregate (or 6.67 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,<sup>26</sup> for an estimated average annual burden of 800 hours in the aggregate for all 20 respondents.<sup>27</sup> 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 **806.67 hours in the aggregate** for all of the estimated 20 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 35 SBS Entities that will not be dually-registered with the CFTC, staff 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 35 Commission-only SBS Entities, for an estimated one-time initial burden of 2,800 hours in the aggregate (or 933.33 hours on a three year-annualized basis).<sup>28</sup> 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 1,400 hours in the aggregate for all 35 respondents.<sup>29</sup> 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 **2.333.33 hours in the aggregate** for all 35 respondents that may be registered only with the SEC.

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<sup>26</sup> Although dually-registered SBS Entities would technically need to revise and maintain their policies and procedures to ensure compliance with both the Commission and CFTC rules, we have decided to conservatively assume that all of the estimated hours would be incurred in connection with compliance with the collection of information associated with Rule 15Fi-3.

<sup>27</sup> 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”).

<sup>28</sup> 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 Adopting Release, 81 FR at 39831 n. 242.

<sup>29</sup> See supra note 27.

## 5. Reporting of Certain Valuation Disputes

Rule 15Fi-3(c) requires 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. 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.<sup>30</sup> Accordingly, Commission staff does not expect there to be any initial burden of designing a system for submitting these notices. Staff also 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 estimates that each of the 55 SBS Entity respondents will spend on average of 24 hours each year complying with this requirement,<sup>31</sup> for an estimated average annual burden of **1,320 hours in the aggregate.**

### B. Rule 15Fi-4: Portfolio Compression

#### 1. Conducting Bilateral Offsets and Portfolio Compression

Respondents will also incur hourly burdens as they undertake bilateral offsets and portfolio compression exercises pursuant to the written policies and procedures required by Rule 15Fi-4. 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 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 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 counterparties,<sup>32</sup>

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<sup>30</sup> See Risk Mitigation Proposing Release, 84 FR at 4621 n. 47, 4643.

<sup>31</sup> This estimate is identical to the one used by the CFTC in the course of adopting a similar rules in 2011. See Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715, 6723 (Feb. 8, 2011).

<sup>32</sup> 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

(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,<sup>33</sup> 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 20 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 as required by Rule 15Fi-4, we 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 20 dually-registered SBS Entities, for an estimated one-time initial burden of 20 hours in the aggregate (or 6.67 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, for an estimated average annual burden of 800 hours in the aggregate for all 20 respondents.<sup>34</sup> 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 **806.67 hours in the aggregate** for all of the estimated 20 respondents that 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 35 SBS Entities that are not dually-registered with the CFTC, Commission staff 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 35 Commission-only SBS Entities, for an estimated average annual burden of 2,800 hours in the aggregate (or 933.33 hours on a three-year annualized

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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.

<sup>33</sup> 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.

<sup>34</sup> See supra note 27.

basis).<sup>35</sup> 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 1,400 hours in the aggregate for all 20 respondents.<sup>36</sup> Combining these initial and annual burdens results in a total estimated average annual burden of **2,333.33 hours in the aggregate** for all 35 respondents that may be registered only with the SEC.

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

#### 1. Preparation of Written Trading Relationship Documentation

As noted above, Commission staff 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 purposes of the underlying documentation requirements (i.e., as opposed to the requirements to establish and maintain policies and procedures), 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 rule. With this in mind, staff 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 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 Rule 15Fi-5 will be approximately 15 hours (or 270 hours for each of the 55 SBS Entities).<sup>37</sup> 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 with Rule 15Fi-4. These estimates are further based on an assumption that, in each case, the written documentation will always include the valuation agreements set forth in Rule 15Fi-5(b)(4), notwithstanding the fact that the rule only requires this information in certain circumstances.

Based on these estimates and assumptions, Commission staff estimates that the requirement to prepare written relationship documentation in accordance with 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

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<sup>35</sup> See supra note 28.

<sup>36</sup> See supra note 27.

<sup>37</sup> As was the case in calculating the estimated burdens 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.

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 20 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 required by Rule 15Fi-5. Accordingly, these 20 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 as required by Rule 15Fi-5, we 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 20 dually-registered SBS Entities, for an estimated one-time burden of 20 hours in the aggregate (or 6.67 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, for an estimated average annual burden of 800 hours in the aggregate for all 35 respondents.<sup>38</sup> 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 **806.67 hours in the aggregate** for all of the estimated 20 respondents that 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 35 SBS Entities that are not dually-registered with the CFTC, Commission staff 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 35 Commission-only SBS Entities, for an estimated average annual burden of 2,800 hours in the aggregate (or 933.33 hours on a three year-annualized basis).<sup>39</sup> 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 (including both dually-registered and non-dually-registered SBS Entities), for an estimated average annual burden of 1,400 hours in the aggregate for all 35 respondents.<sup>40</sup> 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 **2.333.33 hours in the aggregate** for all 35 respondents that may be registered only with the SEC.

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<sup>38</sup> See supra note 27.

<sup>39</sup> See supra note 28.

<sup>40</sup> See supra note 27.

#### 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 in the aggregate** for all 55 SBS Entity respondents.

#### D. Summary

Combining the total estimates included above, **Commission staff estimates that the total estimated aggregate annual burden associated with new Rules 15Fi-3 through 15Fi-5 will be 440,381.30 hours.** 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.<sup>41</sup> For the requirement to establish, maintain, and enforce written policies and procedures, the estimates were consistent with those used in other Commission rulemakings that contained similar requirements for SBS Entities.<sup>42</sup>

### 13. **Costs to Respondents**

The Commission does not currently estimate that any of the rules would impose costs 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 Rule 15Fi-3 or the compression exercises contemplated by 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, which could potentially include data on the monetized costs of using such services. Accordingly, this Paperwork Reduction Act 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 will use third party vendors in these 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 would not incur a cost in connection with the collection of this information.

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<sup>41</sup> See Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715, 6723 (Feb. 8, 2011).

<sup>42</sup> See e.g., Trade Acknowledgment and Verification Adopting Release, 81 FR at 39831.



## 15. Changes in Burden

As previously discussed, the only changes in burden – as compared to the Risk Mitigation Adopting Release – are due to the fact that the Commission now estimates that approximately 20 entities will be dually registered with the CFTC as Swap Entities (as opposed to the 35 estimated dual registrants used in connection with the Risk Mitigation Proposing Release).<sup>43</sup> The total number of respondents (55 SBS Entities) has not changed. As a result, instead of having 35 dual registrants and 20 SEC-only registrants, those numbers are now reversed. That change only impacts requirements where the burdens are broken down in such a manner, namely the requirement to establish, maintain, and enforce written policies and procedures – *i.e.*, because SBS Entities that had previously registered with the CFTC as Swap Entities should already have policies and procedures that are substantially similar to what the Commission in requiring pursuant to Rules 15Fi-3 through 15Fi-5.

The change in burden in the collection of information for Rule 15Fi-3 through 15Fi-5 is an **increase in the total estimated aggregate burden of 1,185 hours** (as compared to the proposed rules), which is broken down as follows:

<b>CHANGES IN ANNUALIZED HOURLY BURDEN</b>			
<b>All of the changes are due to a modification of the estimate of the number of SBS Entities that will be dually-registered with the CFTC (discussed above).</b>			
Requirement	Estimate in Risk Mitigation Proposing Release	Estimate in Risk Mitigation Adopting Release	Total Change
Rule 15Fi-3 (Reconciliation) Policies and Procedures (Dual SEC/CFTC)	1,400 hours (Ongoing)	800 (Ongoing)	-600
	11.67 (Initial one-time)	6.67 (Initial one-time)	-5
Rule 15Fi-3 (Reconciliation) Policies and Procedures (SEC Only)	800 (Ongoing)	1,400 (Ongoing)	+600
	533.33 (Initial one-time)	933.33 (Initial one-time)	+400
Rule 15Fi-4 (Compression) Policies and Procedures (Dual SEC/CFTC)	1,400 hours (Ongoing)	800 (Ongoing)	-600
	11.67 (Initial one-time)	6.67 (Initial one-time)	-5
Rule 15Fi-4 (Compression) Policies and Procedures (SEC Only)	800 (Ongoing)	1,400 (Ongoing)	+600
	533.33 (Initial one-time)	933.33 (Initial one-time)	+400
Rule 15Fi-5 (Documentation) Policies and Procedures (Dual SEC/CFTC)	1,400 hours (Ongoing)	800 (Ongoing)	-600
	11.67 (Initial one-time)	6.67 (Initial one-time)	-5
Rule 15Fi-5 (Documentation) Policies and Procedures (SEC Only)	800 (Ongoing)	1,400 (Ongoing)	+600
	533.33 (Initial one-time)	933.33 (Initial one-time)	+400
<b>TOTAL BURDEN CHANGE</b>			<b>+1,185 hours</b>

<sup>43</sup> See supra note 15 and accompanying text.

**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.