

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission
for Registration Requirements for Security-based Swap Dealers and Major Security-based
Swap Participants
OMB Control No. 3235-0696

A. JUSTIFICATION

1. Information Collection Necessity

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) added Section 15F to the Securities Exchange Act of 1934 (“Exchange Act”) to create a regulatory structure to allow the Securities and Exchange Commission (the “Commission”) to regulate security-based swap dealers and major security-based swap participants (collectively, “SBS Entities”).

On August 5, 2015, the Commission adopted Rules 15Fb1-1 through 15Fb6-2 and Forms SBSE, SBSE-A, SBSE-BD, SBSE-C, and SBSE-W to create a process to register SBS Entities.¹

When it adopted Rules 15Fb1-1 through 15Fb6-2 and the associated Forms, the Commission recognized that firms would require time, before the registration rules required that they register, to review rules not yet adopted that would be applicable to SBS Entities before they could make informed decisions regarding whether they would continue to conduct a security-based swap business in the U.S., and to determine which of their associated persons may be subject to the statutory prohibition provision. Due to this, the Commission made compliance with the registration requirements contingent on its future adoption of certain rules that would be applicable to SBS Entities. More specifically, the “Registration Compliance Date” is “the later of: six months after the date of publication in the Federal Register of a final rule release adopting rules establishing capital, margin and segregation requirements for SBS Entities; the compliance date of final rules establishing recordkeeping and reporting requirements for SBS Entities; the compliance date of final rules establishing business conduct requirements under Exchange Act Sections 15F(h) and 15F(k); or the compliance date for final rules establishing a process for a registered SBS Entity to make an application to the Commission to permit an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf.”

Beginning on August 6, 2021, market participants were required to begin to assess whether they meet the relevant thresholds to register as a security-based swap dealer or major

¹ See *Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants*, Securities Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48964 (Aug. 12, 2015). The OMB control number is 3235-0696.

security-based swap participant.² However, as of the date of this PRA submission, market participants who will be required to register as security-based swap dealers or security-based swap participants remain within a “transitional period” and are not yet required to register.³ The transitional period for security-based swap dealers ends two months after the end of the month in which the person becomes no longer able to take advantage of the exception (or, if earlier, the date on which the person submits a complete application for registration to the Commission). That is, market participants that meet the definition of “security-based swap dealer” based on their security-based swap activity only since August 6, 2021 must register only by November 1, 2021. Similarly, a market participant that meets the definition of “major security-based swap participant” as a result of its security-based swap activities in its quarter ending September 30, 2021, register with the Commission remains in a transitional period that ends only two months after the quarter end. That is, market participants that meet the definition of “major security-based swap participant” based only on their security-based swap activity only since August 6, 2021 must register only by December 1, 2021. Thus, as of the date of this submission, no firm is yet required to comply with Rules 15Fb1-1 through 15Fb6-2, or file any of the associated Forms.

Registration

Rule 15Fb2-1(a)⁴ requires a firm to file an application for registration as an SBS Entity with the Commission on Form SBSE,⁵ Form SBSE-A,⁶ or Form SBSE-BD,⁷ as applicable. These Forms were designed to elicit information concerning, among other things, the nature of an SBS Entity’s business, the identity of its principals and controlling persons, and whether it has been sanctioned for investment-related violations. Paragraphs (a) and (b) of Rule 15Fb2-1 also require that each SBS Entity provide the Commission with a certification on Form SBSE-C to facilitate the

² See Key Dates for Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, available at: https://www.sec.gov/page/key-dates-registration-security-based-swap-dealers-and-major-security-based-swap-participants#_ftnref2.

³ Id.

⁴ 17 CFR 240.15Fb2-1(a).

⁵ 17 C.F.R. 249.1600. The rules require SBS Entities that are not already registered as broker-dealers or registered or registering with the CFTC as a swap dealer or major swap participant to use Form SBSE to register with the Commission. Form SBSE elicits all the information the Commission needs to evaluate the applicant’s request for registration.

⁶ 17 C.F.R. 249.1600a. The rules allow SBS Entities that are registered or registering with the CFTC as a swap dealer or major swap participant to use Form SBSE-A instead of Form SBSE to register with the Commission to register with the Commission. Form SBSE-A is shorter than Form SBSE and was designed to elicit information the staff needs to evaluate an SBS Entity’s registration that is not already elicited through the CFTC registration form, which these firms would also be required to provide to the Commission.

⁷ 17 C.F.R. 249.1600b. The rules allow SBS Entities that are also registered broker-dealers to use Form SBSE-BD instead of Form SBSE to register with the Commission. Form SBSE-BD is a shorter form in recognition of the fact that the Commission already has, through Form BD, much of the information elicited through Form SBSE that the staff would need to evaluate the applicant’s request for registration.

Commission’s review of each firm’s application for ongoing registration.⁸ Rule 15Fb2-3⁹ requires a registered SBS Entity to promptly update its Form SBSE, SBSE-A, or SBSE- BD, as applicable, when information contained in those Forms changes or becomes materially inaccurate. Rule 15Fb2-4¹⁰ requires nonresident SBS Entities to (1) file an additional schedule to Form SBSE, Form SBSE-A, or Form SBSE-BD, as appropriate, to inform the Commission of the identity and location of its U.S. agent for service of process and to certify that it can, as a matter of law, and will provide the Commission with access to its books and records and submit to onsite inspection and examination by the Commission, and (2) obtain an opinion of counsel stating that the nonresident SBS Entity can, as a matter of law, provide the Commission with access to its books and records submit to onsite inspection and examination by the Commission. Rule 15Fb6-2¹¹ requires SBS Entities to certify, on Form SBSE-C, that it neither knows, nor in the exercise of reasonable care should have known, that any person associated with it who effects or is involved in effecting security-based swaps on its behalf is subject to a statutory disqualification, unless otherwise specifically provided by rule, regulation or order of the Commission. That rule also requires that, to support this certification, an SBS Entity’s CCO (or his or her designee) must review and sign the questionnaire or application for employment obtained in compliance with other rules¹² executed by each associated person who is a natural person and who effects or is involved in effecting security based swaps on the SBS Entity’s behalf. As these Forms are filed electronically, Rule 15Fb1-1¹³ requires that an SBS Entity retain a copy of manually signed signature pages to assure that they are available for review by examiners.

The collections of information included in these rules and forms are necessary to allow the Commission to effectively determine whether the applicant meets the statutory requirements to engage in the security-based swap business. In addition, these collections of information are necessary to allow the Commission to adequately supervise the activities of these SBS Entities on an ongoing basis.

Withdrawal

Rule 15Fb3-2¹⁴ allows a registered SBS Entity to withdraw from registration with the Commission by filing Form SBSE-W.¹⁵ The collection of information included in Rule

⁸ 17 CFR 240.15Fb2-1(b).

⁹ 17 CFR 240.15Fb2-3.

¹⁰ 17 CFR 240.15Fb2-4.

¹¹ 17 CFR 240.15Fb6-2. Exchange Act Section 15F(b)(6) specifically prohibits SBS Entities from permitting any of their associated persons who are subject to a “statutory disqualification” (as described in paragraphs (A) through (F) of Exchange Act Section 3(a)(39)) to effect or be involved in effecting security-based swaps on behalf of the SBS Entity if the SBS Entity knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

¹² See e.g., Exchange Act Rule 17a-3(a)(12)(i) and proposed Rule 18a-5(a)(8)(i).

¹³ 17 CFR 240.15Fb1-1.

¹⁴ 17 CFR 240.15Fb3-2.

¹⁵ 17 CFR 249.1601.

15Fb3-2 and Form SBSE-W is necessary to allow the Commission to determine whether it is in the public interest to allow the SBS Entity to withdraw from registration.

2. Information Collection Purpose and Use

Registration

The Commission uses the information disclosed by applicants through the SBS Entity registration rules and forms, including the re-proposed forms to: (1) determine whether an applicant meets the standards for registration set forth in the provisions of the Exchange Act; and (2) develop an information resource regarding SBS Entities where members of the public may obtain relevant, up-to-date information about SBS Entities, and where the Commission may obtain information for examination and enforcement purposes. Without the information provided through these SBS Entity registration rules and forms, the Commission could not effectively determine whether the applicant meets the standards for registration or implement policy objectives of the Exchange Act.

Withdrawal

The information collected pursuant to Rule 15Fb3-2 and Form SBSE-W allows the Commission to determine whether it is appropriate to allow an SBS Entity to withdraw from registration and to facilitate that withdrawal. Without this information, the Commission would be unable to effectively determine whether it was appropriate to allow an SBS Entity to withdraw. In addition, it would be more difficult for the Commission to properly regulate SBS Entities if it were unable to quickly identify those that have withdrawn from the security-based swap business.

3. Consideration Given to Information Technology

SBS Entity applicants must file Form SBSE, Form SBSE-A, or Form SBSE-BD, as appropriate, and attachments thereto (including the appropriate Schedules, opinions of counsel, and Form SBSE-C) electronically. The Commission believes that this method of collecting information reduces the regulatory burden upon SBS Entities.

4. Duplication

This is the only registration requirement for SBS Entities. While an SBS Entity may otherwise be registered because it engages in other types of business (e.g., as a swap dealer or major swap participant or as a broker-dealer), these rules and Forms reduce the possibility of duplication by requiring that SBS Entities otherwise registered because of other lines of business may file a shorter Form (e.g., Form SBSE-A or Form SBSE-BD).

5. Effect on Small Entities

Based on the Commission's existing information about the security-based swap market, the Commission believes that no entities that will qualify as SBS Entities will be "small entities."

6. Consequences of Not Conducting Collection

Paragraphs (a) and (b) of Rule 15Fb2-1 require that an SBS Entity file Form SBSE, Form SBSE-A, or Form SBSE-BD (including the additional schedules required to comply with Rules 15Fb2-4), as applicable, and Form SBSE-C only once to register. Rule 15Fb2-3 would require an SBS Entity to file amendments to Forms SBSE, SBSE-A, and SBSE-BD, as applicable, only when information contained therein becomes inaccurate. Less frequent collection of information pursuant to these rules and forms would impair the accuracy of the information available to the Commission, which could impede its decision-making regarding, and oversight of, these entities.

Rule 15Fb3-2 requires that an SBS Entity file Form SBSE-W to withdraw from registration only once. Less frequent collection of this information would limit the Commission's understanding of whether registered SBS Entities continue to engage in business and could result in a misallocation of Commission resources to oversee SBS Entities that are no longer engaged in this business.

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 required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

9. Payment or Gift

Not applicable.

10. Confidentiality

The Commission intends to make the information submitted to the Commission pursuant to Rules 15Fb1-1 through 15Fb6-2 and Forms SBSE-C and SBSE-W, along with Forms SBSE, SBSE-A, SBSE-BD, public. Information firms are required to create and maintain at their offices pursuant to Rules 15Fb1-1 through 15Fb6-2 would generally only be accessed by the Commission staff during examinations and, to the extent the Commission obtains copies of those records, they will be kept confidential (subject to applicable law).

11. Sensitive Questions

The information collection collects personally identifiable information ("PII") that may include taxpayer ID number, name, criminal/civil history, occupation, job title, work address, telephone number, email address, certificate/license number, and business associates. However,

the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a privacy impact assessment (“PIA”) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on February 5, 2020, covers this information collection.

12. Information Collection Burden

a. Respondents:

Based on a current review of available data, the Commission continues to estimate that approximately 50 entities may fit within the definition of SBS Dealer and up to five entities may fit within the definition of major security-based swap participant.¹⁶ All of these entities will need to register within the first year of the Registration Compliance Date.

Of the 55 entities likely to be either security-based swap dealers or major security-based swap participants, the Commission staff continues to estimate that approximately 22 entities will be registered foreign security-based swap dealers or foreign major security-based swap participants (collectively, “Nonresident SBS Entities”).¹⁷

The staff further estimates, based on its experience and understanding of the unregulated swaps and security-based swaps markets, that the majority of firms that may register as SBS Entities (30) also will be engaged in the swaps business and will register with the CFTC as swap dealers or major swap participants. In addition, persons holding securities positions may find it beneficial to hedge those positions with security-based swaps, so it may be beneficial for a broker-dealer to become an SBS Entity so that it can provide this option to its customers. Thus, Commission staff estimate that approximately 16 broker-dealers will seek to register as SBS Entities.

Finally, given the costs of registration, it may be less likely for an entity that is not otherwise registered with the CFTC or the Commission to register as an SBS Entity. Consequently, the Commission staff estimate that only nine firms not otherwise registered with the CFTC or the Commission will seek to become an SBS Entity (four as security-based swap dealers and five as major security-based swap participants).¹⁸

b. Description of Burdens:

i. Burden Associated with Filing Application Forms

Rule 15Fb2-1 requires that each SBS Entity register with the Commission by filing an application. The Commission has attempted to reduce the burden associated with the

¹⁶ Based on an analysis of 2017 DTCC’s Trade Information Warehouse data.

¹⁷ *Id.*

¹⁸ *Id.*

application process by providing multiple forms for SBS Entities to use to register (Form SBSE, Form SBSE-A, or Form SBSE-BD). Each SBS Entity will only need to research, complete, and file one form.

While it is likely that the time necessary to complete these forms will vary depending on the nature and complexity of the entity's business, the Commission staff estimated in the SBS Entity Registration Proposing Release (based on its experience with Form BD) that the average time necessary for an SBS Entity to research the questions, and complete and file proposed Form SBSE (including the Schedules¹⁹ and disclosure reporting pages ("DRPs")) will be approximately 42 hours. As discussed above, the Commission estimates that approximately nine firms will need to register using Form SBSE. Consequently, we estimate that the total burden associated with filing Form SBSE is approximately 378 hours.²⁰

In summary, the Commission estimates that, over a three-year period, the total reporting burden associated with Filing Form SBSE will be approximately 378 hours, or 126 hours per year²¹ when annualized over three years. The average estimated burden per SBS Entity will be 42 hours, or 14 hours per year²² when annualized over three years.

As Form SBSE-A is shorter than the Form SBSE, Commission staff estimates that it should take an SBS Entity approximately 34 hours to research, complete, and file a Form SBSE (including the Schedules and DRPs). The Commission estimates that approximately 30 firms need to register using Form SBSE-A because they will also be registered with the CFTC and will not otherwise be able to register using Form SBSE-BD. Consequently, we estimate the total burden associated with filing Form SBSE-A to be approximately 1,020 hours.²³

In summary, the Commission estimates that, over a three-year period, the total reporting burden associated with Filing Form SBSE-A will be approximately 1,020 hours, or 340 hours per year²⁴ when annualized over three years. The average estimated burden per SBS Entity will be 34 hours, or 11.3333 hours per year²⁵ when annualized over three years.

The Commission staff estimates that, as Form SBSE-BD is shorter than either Form SBSE or Form SBSE-A and broker-dealers who will be filing Form SBSE-BD are familiar with Commission terminology and forms, researching, completing, and filing a Form SBSE-BD

¹⁹ Except Schedule F, which is dealt with separately below.

²⁰ 42 hours x 9 SBS Entities = 378 hours.

²¹ 378 hours ÷ 3 years = 126 hours per year.

²² 378 hours ÷ 9 (estimated number of SBS Entities) = 42 hours per respondent ÷ 3 years = 14 hours per respondent per year.

²³ 34 hours x 30 SBS Entities = 1,020 hours.

²⁴ 1,020 hours ÷ 3 years = 340 hours per year.

²⁵ 1,020 hours ÷ 30 (estimated number of SBS Entities) = 34 hours per respondent ÷ 3 years = 11.3333 hours per respondent per year.

should take an SBS Entity approximately 10½ hours to research, complete, and file a Form SBSE (including the Schedules). As discussed above, the Commission estimates that approximately 16 SBS Entities will need to register using Form SBSE-BD. Consequently, we estimate that the total burden associated with filing Forms SBSE-BD is approximately 168 hours.²⁶

In summary, the Commission estimates that, over a three-year period, the total reporting burden associated with Filing Form SBSE-BD will be approximately 168 hours, or 56 per year²⁷ when annualized over three years. The average estimated burden per SBS Entity will be 10.5 hours, or 3.5 hours per year²⁸ when annualized over three years.

ii. Burden Associated with Amending Application Forms

Rule 15Fb2-3 requires that each SBS Entity amend its Form SBSE, SBSE-A, or SBSE-BD, as applicable, if it finds that the information contained therein has become inaccurate. While Rule 15Fb2-3 will requires SBS Entities to update their Forms periodically, each firm will only need to amend that aspect of the Form that has become inaccurate. Consequently, it likely will not take a significant amount of time to make such changes. Based on the number of amendments the Commission receives annually on Form BD,²⁹ the Commission estimates that each SBS Entity will file approximately three amendments annually, and that it likely will take an SBS Entity approximately one hour to amend its application each time it files an amendment.³⁰ Consequently, the total burden associated with amending Forms SBSE, SBSE-A, and SBSE-BD, as applicable, is approximately 165 hours.³¹

In summary, the Commission estimates that, over a three-year period, the total reporting burden associated with amending Forms SBSE, SBSE-A, or SBSE-BD, as appropriate, will be approximately 495 hours, or 165 per year³² when annualized over three years. The average estimated burden per SBS Entity over a three-year period will be 9 hours, or 3 hours per year³³ when annualized over three years.

²⁶ 10.5 hours x 16 SBS Entities = 168 hours.

²⁷ 168 hours ÷ 3 years = 56 hours per year.

²⁸ 168 ÷ 16 (estimated number of SBS Entities) = 10.5 hours per respondent ÷ 3 years = 3.5 hours per respondent per year.

²⁹ On September 1, 2018 there were 3,820 broker-dealers registered with the Commission (based on Form BD data). The Commission received 12,902, 14,330, 10,835, 11,583, and 11,703 amended Forms BD during the fiscal years ending 9/30/2013, 9/30/2014, 9/30/2015, 9/30/2016 and 9/30/2017, respectively. $((12,902 + 14,330 + 10,835 + 11,583 + 11,703) \div 5 \text{ years}) \div 3,820 \text{ broker-dealers} = 3.2 \text{ amendments per broker-dealer per year.}$

³⁰ The time necessary to file an amendment to Form SBSE, Form SBSE-A, or Form SBSE-BD, as applicable may vary depending on the nature and complexity of the information to be amended.

³¹ 1 hour x three amendments per year x 55 SBS Entities = 165 hours.

³² (165 hours Y1 burden for 55 SBS Entities to file Form SBSE, SBSE-A, or SBSE-BD) + (165 hours Y2 burden for 55 SBS Entities to file Form SBSE, SBSE-A, or SBSE-BD) + (165 hours Y3 burden for 55 SBS Entities to file Form SBSE, SBSE-A, or SBSE-BD) = 495 hours per respondent ÷ 3 years = a total of 165 hours per year for all respondents.

³³ 495 hours (total burden to file Forms SBSE, SBSE-A, and SBSE-BD, collectively) ÷ 55 (estimated number

iii. Burden Associated with Certifications

Paragraph (a) of Rule 15Fb2-1 requires that each SBS Entity file Form SBSE-C, which includes two separate certifications, as part of its application to register as an SBS Entity. One of the certifications, required by Rule 15Fb2-1(b), requires a senior officer of the applicant to certify that, after due inquiry, the senior officer has reasonably determined that the applicant has developed and implemented written policies and procedures reasonably designed to prevent violations of the federal securities laws and the rules thereunder. The other certification, required by Rule 15Fb6-2, requires that the SBS Entity's CCO certify that none of its associated persons that effects or is involved in effecting security-based swaps on its behalf is subject to statutory disqualification, unless otherwise specifically provided by rule, regulation or order of the Commission. Each SBS Entity will need to file Form SBSE-C only once.

With respect to the burdens associated with the first certification, the Commission estimates that it will take a senior officer approximately 20 hours to review an SBS Entity's written policies and procedures and take whatever other actions he or she deems necessary to gain comfort to sign the Senior Officer Certification. We further estimate that the burden associated with having a senior officer sign a certification likely will be approximately five hours. Consequently, we estimate that the total burden associated with having a senior officer review an SBS Entity's written policies and procedures and or taking whatever other actions he or she deems necessary to gain comfort necessary to sign the Senior Officer Certification and to then sign the certification on Form SBSE-C will be approximately 1,375 hours for all entities.³⁴

The Commission estimates that it will take a CCO approximately one hour to certify on Schedule G that no associated that is a natural person who effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification.³⁵ We further estimate that each SBS Entity may have, on average 10 associated persons that are not natural persons effecting or involved in effecting security-based swaps on their behalf,³⁶ and that it will likely take, on average, approximately five hours for a CCO to collect

of SBS Entities) = 9 hours ÷ 3 = 3 hours per respondent per year.

³⁴ (5 hours + 20 hours) x 55 SBS Entities = 1,375 hours.

³⁵ Registration Proposing Release at 65811.

³⁶ Rule 15Fb6-1 limits the scope of the prohibition in Exchange Act Section 15F(b)(6) so that unless otherwise ordered by the Commission, an SBS Entity that files an application with the Commission to register as an SBS Entity on or before 180 days after the Registration Compliance Date may permit a person associated with it that is not a natural person and that is subject to statutory disqualification to effect or be involved in effecting security-based swaps on its behalf, provided that the statutory disqualification(s), described in Sections 3(a)(39)(A) through (F) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)(A) – (F)), occurred prior to the Registration Compliance Date. In addition, Rule 15Fb6-2(b) clarifies that an SBS Entity's CCO is only required to review and sign questionnaires and applications of natural persons, because those are the only types of persons that would generally submit such a questionnaire or application. Based on the fact that the statutory prohibition is limited to persons who effect or are involved in effecting security-based swaps on an SBS Entity's behalf (and not all associated persons), as well as staff experience and observations, we estimate that each SBS Entity could have approximately 10 affected associated persons that are entities.

information from its legal or other internal departments or its holding company to determine whether each of its associated persons that is not a natural person is subject to statutory disqualification. Thus, the Commission estimates that the total burden to all SBS Entities to complete the CCO Certification Regarding Associated Persons on Form SBSE-C will be approximately 2,805 hours.³⁷

In summary, the Commission estimates that the total reporting burden associated with filing Form SBSE-C will be approximately 4,180 hours, or 1,393.33 per year³⁸ when annualized over three years. The average estimated burden per SBS Entity over a three-year period will be 76 hours, or 25.3333 hours per year³⁹ when annualized over three years.

iv. Burden Relating to Associated Persons

Rule 15Fb6-2 requires an SBS Entity's CCO certify, on Form SBSE-C, that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification, except as otherwise provided by rule, regulation, or order of the Commission.⁴⁰ The rule further provides that to support this certification the CCO, or his or her designee, must review and sign a questionnaire or application for employment executed by each of its associated persons who is a natural person and who effects or is involved in effecting security based swaps on the SBS Entity's behalf. SBS Entities will only need to fulfill these obligations for associated persons that effect or are involved in effecting security based swaps on behalf of the SBS Entity.⁴¹ In addition, this is a one-time certification provided as part of the registration process.

³⁷ (10 associated persons that are not natural persons x 5 hours to gain comfort that the entity is not subject to statutory disqualification x 55 SBS Entities) + (1 hour for CCO to sign certification x 55 SBS Entities) = 2,805 hours.

³⁸ 1,375 hours + 2,805 hours = 4,180 hours ÷ 3 years = 1,393.33 hours per year.

³⁹ 4,180 (total burden associated with Form SBSE-C) ÷ 55 (estimated number of SBS Entities) = 76 hours per respondent ÷ 3 years = 25.3333 hours per respondent per year.

⁴⁰ Rule 15Fb6-2 requires that an SBS Entity's CCO, or his or her designee, review and sign the questionnaire or application for employment obtained in compliance with the applicable recordkeeping rule.

⁴¹ 15 U.S.C. 78c(a)(70) generally defines the term "person associated with" an SBS Entity to include: (i) any partner, officer, director, or branch manager of an SBS Entity (or any person occupying a similar status or performing similar functions); (ii) any person directly or indirectly controlling, controlled by, or under common control with an SBS Entity; or (iii) any employee of an SBS Entity. However, it generally excludes persons whose functions are solely clerical or ministerial.

The Commission believes that associated persons "involved in effecting" security-based swaps would include, but not be limited to, persons involved in drafting and negotiating master agreements and confirmations, persons recommending security-based swap transactions to counterparties, persons involved in executing security-based swap transactions, persons pricing security-based swap positions and managing collateral for the SBS Entity, and persons directly supervising persons engaged in these activities. In short, the term would encompass persons engaged in functions necessary to facilitate the SBS Entity's security-based swap business.

In the adopting release, the Commission staff estimated that each SBS Dealer will have 423 associated persons that are natural persons who effect or are involved in effecting security-based swaps on their behalf.⁴² The Commission further estimated that, as Major SBS Participants are more likely to resemble hedge funds and investment advisors, each Major SBS Participant will have 63 associated persons that are natural persons who effect or are involved in effecting security-based swaps on their behalf.⁴³ The staff continues to believe these estimates are appropriate.

The Commission estimates that it will take a CCO (or the CCO's designee) approximately one hour to review and sign a relevant employee's employment record to determine that associated persons who effect or are involved in effecting security-based swaps on their behalf are not subject to statutory disqualification.⁴⁴ If the SBS Entity has not already performed a background check of the employee, we estimate that it may take the CCO (or the CCO's designee) an additional hour to conduct whatever additional review may be necessary.⁴⁵ Consequently, the Commission estimates that the hourly burden for each SBS Dealer that is registered or registering with the Commission or the CFTC will be 423 hours,⁴⁶ and the burden for each other SBS Dealer will be 846 hours.⁴⁷ We have no basis to determine whether Major SBS Participants will already be registered or registering with the Commission or the CFTC, but we assume that all five will be dually-registered. Thus, the hourly burden for each Major SBS Participant will be approximately 63 hours.⁴⁸ We therefore estimate that the total initial burden to all SBS Entities to have their CCOs (or designees) review and sign the employment application or questionnaire for each associated person who is a natural person and who effects or is involved in effecting security-based swaps on their behalf and/or conduct whatever review may be necessary to assure that each such associated person is not subject to statutory disqualification will be approximately 23,157 hours.⁴⁹

⁴² See 80 FR 48964 (Aug. 14, 2015), at 48993.

⁴³ *Id.*

⁴⁴ Registration Proposing Release at 65810. We received no comments on this estimate, and continue to believe it is appropriate.

⁴⁵ The Commission believes that SBS Entities that are registered with the Commission or the CFTC must already conduct a review to determine if their associated persons are statutorily disqualified persons in the CEA and the Exchange Act. See 15 U.S.C. 78f(c)(2), 78o-3(g)(2), and 78q(f)(2), and 7 U.S.C. 6k(5) and 12a(1).

⁴⁶ 423 associated persons x 1 hour = 423 hours.

⁴⁷ 423 associated persons x 2 hours = 846 hours.

⁴⁸ 63 associated persons x 1 hour = 63 hours.

⁴⁹ (One hour x 423 associated persons that are natural persons x (30 SBS Dealers that are registered or registering with the CFTC + 16 SBS Dealers that are registered or registering with the Commission as broker-dealers)) = 19,458 hours for SBS Dealers already registered or registering with the Commission or CFTC) + ((Two hours x 423 associated persons x 4 SBS dealers that are not otherwise registered or registering with the Commission or the CFTC) = 3,384 hours) + ((One hour x 63 associated persons x 5 Major SBS Participants) = 315 hours for Major SBS Participants) = 23,157 hours.

In summary, the Commission estimates that the total recordkeeping burden for SBS dealers that are registered or registering with the CFTC or the Commission associated with the requirement in Rule 15Fb6-2 to review and sign employment questionnaires or applications, will be approximately 19,458 hours, or 6,486 per year⁵⁰ when annualized over three years. The average estimated burden per SBS Entity over a three-year period will be 423 hours, or 141 hours per year⁵¹ when annualized over three years.

In summary, the Commission estimates that the total recordkeeping burden for SBS dealers that are not otherwise registered or registering with the Commission or the CFTC associated with the requirement in Rule 15Fb6-2 to review and sign employment questionnaires or applications, will be approximately 3,384 hours, or 1,128 per year⁵² when annualized over three years. The average estimated burden per SBS Entity over a three-year period will be 846 hours, or 282 hours per year⁵³ when annualized over three years.

In summary, the Commission estimates that the total recordkeeping burden for Major SBS Participants associated with the requirement in Rule 15Fb6-2 to review and sign employment questionnaires or applications, will be approximately 315 hours, or 105 per year⁵⁴ when annualized over three years. The average estimated burden per SBS Entity over a three-year period will be 63 hours, or 21 hours per year⁵⁵ when annualized over three years.

v. Burdens on Nonresident SBS Entities

As indicated previously, the Commission staff continues to estimate that 22 entities will be Nonresident SBS Entities.⁵⁶ Rule 15Fb2-4 requires that each nonresident SBS Entity file an additional schedule (Schedule F) with their Form SBSE, Form SBSE-A, or Form SBSE-BD, as appropriate, to identify its U.S. agent for service of process and to certify that the firm can, as a matter of law, and will provide the Commission with access to its books and records and can, as a matter of law, and will submit to onsite inspection and examination by the Commission.

⁵⁰ One hour x 423 associated persons that are natural persons x (30 SBS Dealers that are registered or registering with the CFTC + 16 SBS Dealers that are registered or registering with the Commission as broker-dealers) = 19,458 hours ÷ 3 = 6,486 hours per year.

⁵¹ 19,458 hours ÷ 46 SBS Entities = 423 hours per respondent ÷ 3 = 141 hours annually per respondent.

⁵² Two hours x 423 associated persons x 4 SBS dealers that are not otherwise registered or registering with the Commission or the CFTC = 3,384 hours ÷ 3 = 1,128 hours per year.

⁵³ 3,384 hours ÷ 4 SBS Entities = 846 hours per respondent ÷ 3 = 282 hours annually per respondent.

⁵⁴ One hour x 63 associated persons x 5 Major SBS Participants = 315 hours ÷ 3 = 105 hours per year.

⁵⁵ 315 hours ÷ 5 SBS Entities = 63 hours per respondent ÷ 3 = 21 hours annually per respondent.

⁵⁶ See text accompanying footnote 17.

Commission staff estimates that the total burden for all nonresident SBS Entities to complete and file Schedule F will be approximately 33 hours.⁵⁷

In summary, the Commission estimates that the total reporting burden associated with the requirements for nonresident SBS Entities in Rule 15Fb2-4 to complete and file Schedule F will be approximately 33 hours, or 11 hours per year⁵⁸ when annualized over three years. The average estimated burden per nonresident SBS Entity over a three-year period will be 1.5 hours, or .5 hours (or 30 minutes) per year⁵⁹ when annualized over three years.

Non-resident entities must also amend Schedule F to inform the Commission if they replace their agent for service of process or if information regarding their existing agent for service of process changes. We do not believe this will occur frequently, and therefore estimate that, annually, ten percent of the non-residents may need to amend their Schedule F to reflect these types of changes annually.

Consequently, we estimate that the total annual burden for SBS Entities to amend Schedule F to reflect changes in information regarding their agent for service of process will be approximately 3 hours annually.⁶⁰

An SBS Entity must also re-certify on Schedule F of such Forms within 90-days after any changes in the legal or regulatory framework that would impact the SBS Entity's ability to provide, or manner in which it provides, the Commission with prompt access to its books and records or that impacts the Commission's ability to inspect and examine the SBS Entity. We do not believe this will occur frequently, and therefore estimate that one non-resident entity may need to recertify annually.

Consequently, we estimate the total ongoing burden associated with this requirement will be approximately 1½ hours annually.⁶¹

vi. Burden Related to Retention of Manually Signed Signature Pages

Pursuant to Rule 15Fb1-1, SBS Entities must create manually signed signature pages and retain them until at least three years after the form or certification has been replaced or is no longer effective. It is likely that each SBS Entity will need to maintain at least two pages with manually signed signatures (the execution page of Form SBSE, SBSE-A, or SBSE-BD, as applicable, and the Form SBSE-C certifications). In addition, nonresident SBS Entities also

⁵⁷ 1.5 hours x 22 nonresident SBS Entities = 33 hours.

⁵⁸ (Y1 initial burden 33 hours) + (Y2 initial burden 0 hours) + (Y3 initial burden 0 hours) = 33 hours ÷ 3 years = 11 hours per year.

⁵⁹ 33 hours ÷ 22 SBS Entities = 1.5 hours per respondent ÷ 3 = .5 hours annually per respondent.

⁶⁰ 22 non-resident SBS Entities x 10% = approximately 2 SBS Entities. 2 SBS Entities x 1.5 hours = 3 hours.

⁶¹ 1 SBS Entity x 1.5 hours per response = 1.5 hours annually per respondent.

will need to retain a manually signed copy of Schedule F. As so few pages will need to be retained, the staff believes the burden associated with retaining them will not be significant.

Thus, the Commission estimates that it will take each SBS Entity approximately 10 minutes annually to assure that these pages are retained, or a total of approximately 9.17 hours annually for all SBS Entities.⁶²

vii. Burden Associated with Filing Withdrawal Form

Given that the cost and effort to register as an SBS Entity will be significant, the Commission believes that entities will not enter and exit this business regularly. As the Form SBSE-W is only one page and consists of information readily available to SBS Entities, the staff estimates that it likely will take an SBS Entity, on average, approximately one hour to complete and file a Form SBSE-W.⁶³ While the Commission believes it is unlikely that any SBS Entity will withdraw from registration often or within the first year, solely for purposes of this PRA the Commission estimates that one SBS Entity may file Form SBSE-W to withdraw from registration annually and the total burden associated with completing and filing Form SBSE-W will be approximately one hour each year.⁶⁴

Thus, the Commission estimates that it will take one SBS Entity approximately one hour to complete and file Form SBSE-W annually.⁶⁵

Summary of Hourly Burdens

<u>IC</u>	<u>Nature of Information Collection Burden</u>	<u>Type of Burden</u>	<u>Number of Respondents</u>	<u>Number of Responses Per Year</u>	<u>Initial Burden Per Response Per Year Per Respondent</u>	<u>Ongoing Burden Per Response Per Year Per Respondent</u>	<u>Annualized Burden Estimate Per Respondent</u>	<u>Annualized Hourly Burden Estimate Industry-Wide</u>
	i. <u>Burden Associated with Filing Application Forms</u>							
1	Rule 15Fb2-1 and Form SBSE: Complete and File Application Form	Reporting	9	1	14	-	14	126

⁶² (10 minutes x 55 SBS Entities) ÷ 60 minutes = 9.17 hours.

⁶³ The Commission included this estimate in the Registration Proposing Release, and received no comment on it. Consequently, we continue to believe this is a good estimate.

⁶⁴ (1 hour x 1 SBS Entity) = 1 hour.

⁶⁵ (1 hour x 1 SBS Entity) = 1 hour.

<u>IC</u>	<u>Nature of Information Collection Burden</u>	<u>Type of Burden</u>	<u>Number of Respondents</u>	<u>Number of Responses Per Year</u>	<u>Initial Burden Per Response Per Year Per Respondent</u>	<u>Ongoing Burden Per Response Per Year Per Respondent</u>	<u>Annualized Burden Estimate Per Respondent</u>	<u>Annualized Hourly Burden Estimate Industry-Wide</u>
2	Rule 15Fb2-1 and Form SBSE-A: Complete and File Application Form	Reporting	30	1	11.3333	-	11.3333	340
3	Rule 15Fb2-1 and Form SBSE-BD: Complete and File Application Form	Reporting	16	1	3.5	-	3.5	56
4	ii. Rule 15Fb2-3: Complete and File Amendments to Application Forms	Reporting	55	3	-	1	3	165
5	iii. Rule 15Fb2-1 and Form SBSE-C: Complete and File Certifications	Reporting	55	1	25.3333	-	25.3333	1,393.33
	<u>iv. Burdens Relating to Associated Persons</u>							
6	Rule 15Fb6-2: Review and Sign Employment Questionnaires - SBS Dealers registered or registering with the SEC or the CFTC	Recordkeeping	46	423	0.3333	-	141	6,486
7	Rule 15Fb6-2: Review and Sign Employment Questionnaires - SBS Dealers not registered or registering with the SEC or the CFTC	Recordkeeping	4	423	0.6667	-	282	1,128

<u>IC</u>	<u>Nature of Information Collection Burden</u>	<u>Type of Burden</u>	<u>Number of Respondents</u>	<u>Number of Responses Per Year</u>	<u>Initial Burden Per Response Per Year Per Respondent</u>	<u>Ongoing Burden Per Response Per Year Per Respondent</u>	<u>Annualized Burden Estimate Per Respondent</u>	<u>Annualized Hourly Burden Estimate Industry-Wide</u>
8	Rule 15Fb6-2: Review and Sign Employment Questionnaires - Major SBS Participants registered or registering with the SEC or the CFTC	Recordkeeping	5	63	0.3333	-	21	105
	<u>v. Burdens on Non-Resident SBS Entities</u>							
9	Rule 15Fb2-4 and Schedule F: Complete and File by Nonresident SBS Entities	Reporting	22	1	0.5	0	0.5	11
10	Rule 15Fb2-4 and Schedule F: Amendments by Nonresident Entities to change Agent for Service of Process	Reporting	2	1	-	1.5	1.5	3
11	Rule 15Fb2-4 and Schedule F: Amendments by Nonresident Entities for changes to Foreign Law	Reporting	1	1	-	1.5	1.5	1.5
12	<u>vi. Rule 15Fb1-1: Retain Manually Signed Signature Pages</u>	Recordkeeping	55	1	-	0.1667	0.1667	9.17
13	<u>vii. 15Fb3-2 and Form SBSE-W: Complete and File Withdrawal Form</u>	Reporting	1	1	-	1	1	1
								9,825

13. Costs to Respondents

There may be some costs associated with these rules, including the cost to nonresident SBS Entities to establish and maintain a relationship with a U.S. agent for service of process, and for nonresident SBS Entities to obtain an opinion of counsel indicating that it can, as a matter of law, provide the Commission with access to its books and records and submit to Commission examinations.

The Commission estimates, based on internet research,⁶⁶ that it will cost each nonresident SBS Entity approximately \$194 annually to appoint and maintain a relationship with a U.S. agent for service of process (an increase of \$18 per year since 2018 attributable to an increase in prices charged by the service providers). Consequently, the total cost for all nonresident SBS Entities to appoint and maintain relationships with U.S. agents for service of process is approximately \$4,268 per year.⁶⁷

Non-resident SBS Entities also will incur outside legal costs associated with obtaining an opinion of counsel. The Commission estimates that each nonresident SBS Entity will incur, on average, approximately \$25,000 in outside legal costs to obtain the necessary opinion of counsel, and that the total cost for all nonresident SBS Entities to obtain this opinion of counsel will be approximately \$550,000.⁶⁸

In summary, the Commission estimates that the total reporting cost associated with the requirements for nonresident SBS Entities in Rule 15Fb2-4 to establish a relationship with an agent for service of process and obtain an opinion of counsel will be approximately \$561,616 or \$187,205 when annualized over three years.⁶⁹ The average estimated cost per nonresident SBS Entity over a three-year period will be \$25,528 or \$8,509 per year.⁷⁰

An SBS Entity must also re-certify on Schedule F of such Forms within 90-days after any changes in the legal or regulatory framework that will impact the SBS Entity's ability to provide, or manner in which it provides, the Commission with prompt access to its books and records or that impacts the Commission's ability to inspect and examine the SBS Entity. The SBS Entity's re-certification must be accompanied by a revised opinion of counsel regarding the new regulatory regime. We do not believe this will occur frequently, and therefore estimate

⁶⁶ See, e.g., <https://www.incorp.com/registered-agent-services/> (as of October 14, 2018, \$129 per state per year), <https://www.wolterskluwer.com/en/solutions/ct-corporation/registered-agent-services-solutions> (as of October 14, 2021, \$305 per year), and <https://www.ailcorp.com/services/registered-agent> (as of October 14, 2021, \$149 per year). The staff sought websites that provided pricing information and a comprehensive description of their registered agent services. We calculated our estimate by averaging the costs provided on these three websites – $(\$129 + \$305 + \$149) \div 3 = \194 .

⁶⁷ $\$194 \text{ per nonresident SBS Entity} \times 22 \text{ nonresident SBS Entities} = \$4,268$.

⁶⁸ $\$25,000 \times 22 \text{ SBS Entities} = \$550,000$.

⁶⁹ $(\text{Y1 initial cost of } \$550,000 + \text{Y1 ongoing cost of } \$4,268) + (\text{Y2 initial cost of } \$0 + \text{Y2 ongoing cost of } \$4,268) + (\text{Y3 initial cost of } \$0 + \text{Y3 ongoing cost of } \$4,268) = \$562,804 \div 3 \text{ years} = \$187,601 \text{ per year}$.

⁷⁰ $\$561,616 \div 22 \text{ non-resident SBS Entities} = \$25,528 \div 3 = \$8,509 \text{ annually per respondent}$.

that one non-resident entity may need to recertify annually. Thus, the total ongoing cost associated with obtaining a revised opinion of counsel regarding the new regulatory regime will be approximately \$25,000 annually.⁷¹

In summary, the Commission estimates that the total reporting cost associated with the requirements for nonresident SBS Entities in Rule 15Fb2-4 to re-certify on Schedule F for changes to foreign law will be approximately \$75,000 or \$25,000 when annualized over three years.⁷² The average estimated cost per nonresident SBS Entity over a three-year period will be \$75,000 or \$25,000 per year.⁷³

⁷¹ \$25,000 x 1 SBS Entity = \$25,000.

⁷² (Y1 ongoing cost of \$25,000) + (Y2 ongoing cost of \$25,000) + (Y3 ongoing cost of \$25,000) = \$75,000 ÷ 3 years = \$25,000 per year.

⁷³ \$75,000 ÷ 1 non-resident SBS Entity = \$75,000 ÷ 3 = \$25,000 annually per respondent.

Summary of Hourly Costs

SBS Entity Registration Cost Burdens									
IC	Nature of Information Collection Burden	Type of Burden	Number of Respondents	Number of Responses Per Year	Initial Cost Per Response Per Year Per Respondent	Ongoing Burden Per Response Per Year Per Respondent	Annualized Cost Estimate Per Respondent	Annualized Hourly Cost Estimate Industry-Wide	Small Business Entities Affected
	<u>i. Burden Associated with Filing Application Forms</u>								
1	Rule 15Fb2-1 and Form SBSE: Complete and File Application Form	Reporting	4	1	-	-	-	-	0
2	Rule 15Fb2-1 and Form SBSE-A: Complete and File Application Form	Reporting	35	1	-	-	-	-	0
3	Rule 15Fb2-1 and Form SBSE-BD: Complete and File Application Form	Reporting	16	1	-	-	-	-	0
4	<u>ii. Rule 15Fb2-3: Complete and File Amendments to Application Forms</u>								
5	iii. Rule 15Fb2-1 and Form SBSE-C: Complete and File Certifications	Reporting	55	1	-	-	-	-	0
	<u>iv. Burdens Relating to Associated Persons</u>								
6	Rule 15Fb6-2: Review and Sign Employment Questionnaires - SBS Dealers registered or registering with the SEC or the CFTC	Recordkeeping	46	1	-	-	-	-	0
7	Rule 15Fb6-2: Review and Sign Employment Questionnaires - SBS Dealers not registered or registering with the SEC or the CFTC	Recordkeeping	4	1	-	-	-	-	0
8	Rule 15Fb6-2: Review and Sign Employment Questionnaires - Major SBS Participants registered or registering with the SEC or the CFTC	Recordkeeping	5	1	-	-	-	-	0
	<u>v. Burdens on Non-Resident SBS Entities</u>								
9	Rule 15Fb2-4 and Schedule F: Complete and File by Nonresident SBS Entities	Reporting	22	1	\$8,333.33	\$176	\$8,509.33	\$187,205.33	0
10	Rule 15Fb2-4 and Schedule F: Amendments by Nonresident Entities to change Agent for Service of Process	Reporting	2	1	-	-	-	-	0
11	Rule 15Fb2-4 and Schedule F: Amendments by Nonresident Entities for changes to Foreign Law	Reporting	1	1	-	\$25,000	\$25,000	\$25,000	0
12	<u>vi. Rule 15Fb1-1: Retain Manually Signed Signature Pages</u>								
13	vii. <u>15Fb3-2 and Form SBSE-W: Complete and File Withdrawal Form</u>	Reporting	1	1	-	-	-	-	0
								\$212,205	

14. Costs to the Federal Government

Commission staff estimates that it will need to hire additional staff when the Registration Compliance Date occurs. The review and processing of a broker-dealer application filed on Form BD requires approximately 2 hours of staff time. As Forms SBSE, SBSE-A, and SBSE-BD are drafted based on Form BD, the Commission believes that review of these documents likely will take approximately the same amount of staff time. Thus, estimating staff time and related overhead at \$75 per hour, the cost to the Federal government in connection with review and processing of SBS Entity applications filed on Forms SBSE, SBSE-A, and SBSE-BD, as

applicable will be approximately \$8,250.⁷⁴ With respect to amended Forms BD, the staff estimates that it requires approximately 1 hour of staff time to review and process the filings.

15. Reason for Changes in Burden

There was an increase in cost of \$396 because we increased our estimate of the cost for each nonresident SBS Entity to appoint and maintain a relationship with a U.S. agent for service of process from \$176 annually to \$194 annually.

16. Information Collections Planned for Statistical Purposes

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

17. Approval to Omit OMB Approval Date

We request authorization to continue to omit the expiration date on the electronic version of the forms. Including the expiration date on the electronic version of the forms will result in increased costs, because the need to make changes to the forms may not follow the application's scheduled version release dates. The OMB control number will be displayed.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection of information complies with the requirements in 5 CFR 1320.9.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.

⁷⁴ 55 SBS Entities x 2 hours x \$75 = \$8,250.