

**SUPPORTING STATEMENT for the Paperwork Reduction Act Information Collection
Submission for Rules Relating to Security-Based Swap Execution and Registration and
Regulation of Security-Based Swap Execution Facilities**

New Request—Proposed 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

The Securities and Exchange Commission (“Commission”) is proposing a set of rules (“Regulation SE”) and forms under Section 3D of the Securities Exchange Act of 1934 (“SEA”) that would create a regime for the registration and regulation of security-based swap execution facilities (“SBSEFs”) and address other issues relating to security-based swap (“SBS”) execution generally.¹ Key rules within Regulation SE would include Rule 803, which would establish a process for SBSEF registration; Rules 804 to 810, which would establish procedures for rule and product filings by SBSEFs; Rules 818 to 831, which would implement the 14 Core Principles for SBSEFs set forth in Section 3D(d) of the SEA; Rules 832 to 833, which would address cross-border matters relating to SBS execution; and Rule 834, which would impose requirements addressing conflicts of interest involving SBSEFs and SBS exchanges, as required by Section 765 of the Dodd-Frank Act.

In addition to the rules described above, the Commission is also proposing: Form SBSEF,² which is the form that an entity would use to register with the Commission as an SBSEF; a submission cover sheet,³ which would be required to accompany filings with the Commission made by SBSEFs for rule and rule amendments and for product listings; amendments to existing Rule 3a1-1 under the SEA⁴ to exempt from the SEA definition of “exchange” registered SBSEFs that provide a market place for no securities other than SBS and certain registered clearing agencies; new Rule 15a-12 under the SEA⁵ that, while affirming that an SBSEF also would be a broker under the SEA, would exempt a registered SBSEF from certain broker requirements; to sunset an existing exemption from the requirement to register as a clearing agency for entities performing the functions of an SBSEF but that are not yet registered

¹ See Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities, SEA Release No. 34-94615 (April 6, 2022), 87 FR 28872 (May 11, 2022) (“Regulation SE Proposing Release”).

² See 17 CFR 249.2001.

³ See 17 CFR 249.2002.

⁴ See 17 CFR 240.3a1-1.

⁵ See 17 CFR 240.15a-12.

as such; and new rules and amendments to the Commission's Rules of Practice,⁶ to allow persons who are aggrieved by certain determinations by an SBSEF to apply for review by the Commission.

The Commission also is withdrawing all previously proposed rules regarding these subjects in view of the length of time that has passed since they were issued and significant changes to the swap and SBS markets that have taken place during that time.

The proposed rules and rule amendments would include a collection of information within the meaning of the PRA for SBSEFs that would be required to comply with Regulation SE and file a Form SBSEF with the Commission. In addition, proposed Rule 833 would include a collection of information within the meaning of the PRA for persons that wish to seek an exemption order under that rule, and proposed Rule 834 would include a collection of information within the meaning of the PRA for SBS exchanges (in addition to SBSEFs).

Many of the proposed rules that comprise Regulation SE are modelled after analogous CFTC rules already in force, with only minor edits to reflect differences between the statutory regimes of the two agencies. Entities that are most likely to register with the Commission as SBSEFs are those already registered with the CFTC as SEFs. Such entities have made substantial investments in systems, policies, and procedures to comply with and adapt to the regulatory system developed by the CFTC. Harmonization would allow such dually-registered entities to utilize their existing systems, policies, and procedures to comply with the Commission's SBSEF rules, and SEF members would likely face only marginal additional burdens to trade SBS as well as swaps on dually registered platforms. In light of these factors, the Commission has based many of its paperwork burden estimates on CFTC burden estimates calculated for analogous CFTC rules. The CFTC estimated PRA burdens by aggregating the burdens produced by a group of related rules. In most cases, the Commission has modelled its methodology, assumptions, and calculations on those of the CFTC, while making adjustments that reflect differences between the scale of the market for swaps relative to the market for SBS, such as the estimated number of SBSEFs, number of SBS market participants, and number of SBS transactions, as necessary.

2. Purpose and Use of the Information Collection

a. Registration requirements and Form SBSEF

Proposed Regulation SE would impose various requirements relating to SBSEF registration, which are set forth in proposed Rule 803.⁷ The information collected pursuant to these proposed rules would enhance the ability of the Commission to determine whether to approve the registration of an entity as an SBSEF; to monitor and oversee SBSEFs; to determine that SBSEFs initially comply, and continue to operate in compliance, with the SEA, including the Core Principles applicable to SBSEFs; to carry out its statutorily mandated oversight

⁶ See 17 CFR Part 201.

⁷ See, e.g., proposed Rule 803(b)(1) (requiring an entity that wishes to register with the Commission as an SBSEF to submit a Form SBSEF).

functions; and to maintain accurate and updated information regarding SBSEFs. Because the registration information would be publicly available, it could also be useful to an SBSEF's members, other market participants, other regulators, and the public generally.

b. Requirements for SBSEFs to establish rules

Various provisions of proposed Regulation SE would require SBSEFs to establish certain rules, policies, and procedures to comply with applicable requirements of the SEA and the Commission's rules thereunder.⁸ The rules also would help an SBSEF's members to understand and comply with requirements of the SBSEF.

c. Reporting requirements for SBSEFs

Various provisions of proposed Regulation SE would require SBSEFs and certain other persons to submit reports or provide specified information.⁹ This information generally would be used by the Commission in its oversight of SBSEFs and the SBS markets; certain of the information to be collected could be used by market participants to confirm their SBS transactions.

d. Recordkeeping required under Regulation SE

Proposed Regulation SE would require an SBSEF to keep specified records.¹⁰ The audit trail information required to be maintained under proposed Regulation SE would aid the SBSEF in detecting and deterring fraudulent and manipulative acts with respect to trading on its market, as well as help it to fulfill the statutory requirement in Core Principle 4 that an SBSEF monitor trading in SBS, including through comprehensive and accurate trade reconstructions. In addition, Commission access to these records would provide a valuable tool to help the Commission carry out its oversight responsibility over SBSEFs and the SBS markets in general.

e. Timely publication of trading information requirement for SBSEFs

Proposed Regulation SE would impose certain publication burdens on SBSEFs in proposed Rule 825.¹¹ The requirement contained in proposed Rule 825 that an SBSEF have the capacity to electronically capture, transmit, and disseminate information on price, trading

⁸ See, e.g., proposed Rule 819(a)(2) (requiring an SBSEF to establish and enforce trading, trade processing, and participation rules).

⁹ See, e.g., proposed Rule 829 (requiring an SBSEF, quarterly or upon Commission request, to provide the Commission a report that includes the amount of financial resources necessary to meet the requirements of Rule 829).

¹⁰ See proposed Rule 826 (requiring an SBSEF to maintain records of all activities relating to the business of the facility, including a complete audit trail, and to report information to the Commission upon request).

¹¹ See proposed Rule 825 (requiring an SBSEF to make publicly available a "Daily Market Data Report").

volume, and other trading data on all SBS executed on or through the SBSEF would assist the SBSEF in carrying out its regulatory responsibilities under the SEA and enable the SBSEF to comply with reasonable requests to provide information to others. Furthermore, proposed Rule 825 would require an SBSEF to publish a Daily Market Data Report that is designed to provide market observers with a daily snapshot of market activity on the SBSEF.

f. Rule filing and product filing processes for SBSEFs

Proposed Regulation SE would establish various filing requirements applicable to SBSEFs. Proposed Rules 804 and 805 would provide mechanisms for an SBSEF to submit filings for new products that they seek to list either through a self-certification process or by voluntarily requesting approval of the Commission, respectively. Proposed Rules 806 and 807 would require an SBSEF to submit new rule or rule amendments either through a self-certification process or by voluntarily requesting approval of the Commission, respectively. Proposed Rule 808 would address confidential treatment of filings made under the self-certification procedures or pursuant to Commission review and approval. Proposed Rule 809 would establish procedures for addressing the situation where an SBSEF wishes to list a product and it is unclear whether the product properly falls under the jurisdiction of the SEC or the CFTC. Proposed Rule 810 would provide that an applicant for registration as an SBSEF may submit for Commission review and approval an SBS's terms and conditions or rules prior to listing the product as part of its application for registration.

The information that would be collected under proposed Rules 804 and 805 would help the Commission assess whether an SBS listed by an SBSEF complies with relevant provisions of the SEA. In addition, this information would assist the Commission in overseeing the SBSEF's compliance with its regulatory obligations generally and to learn about developments in the SBS product market. Proposed Rules 804 and 805 also would provide a mechanism whereby market participants, other SBSEFs, other regulators, and the public generally could learn what products an SBSEF intends to list, and to obtain information regarding such products. The information that would be collected under proposed Rules 806 and 807 would help the Commission assess whether a new rule or rule amendment of an SBSEF complies with relevant provisions of the SEA, and assist the Commission in overseeing the SBSEF's compliance with its regulatory obligations generally. Proposed Rules 806 and 807 also would provide a mechanism whereby an SBSEF's members (and prospective members) could learn what new rules or rule amendments the SBSEF intends to apply in its market.

The information collected under proposed Rules 809 and 810 would help the Commission assess an SBSEF's compliance with relevant provisions of the SEA, and assist the Commission in overseeing the SBSEF's compliance with its regulatory obligations. This information also would be useful to the SBSEF's members, because they would be subject to such new or amended rules or products and thus would have an interest in learning about those rules or products. Other market participants, other SBSEFs, and other regulators, as well as the public generally, may find information about proposed new or amended rules or products useful.

g. Requirements relating to the CCO

Proposed Regulation SE includes Rule 831 that would set out requirements relating to an SBSEF's CCO. The information that would be collected under proposed Rule 831 would help ensure compliance by SBSEFs with relevant provisions of the SEA and assist the Commission in overseeing SBSEFs generally. The Commission could use the annual compliance report to help it evaluate whether an SBSEF is carrying out its statutorily-mandated regulatory obligations and, among other things, to discern the scope of any denials of access or refusals to grant access by the SBSEF and to obtain information on the status of the SBSEF's regulatory compliance program. The SBSEF's fourth-quarter financial report would provide the Commission with important information on the financial health of the SBSEF.

h. Surveillance systems requirements for SBSEFs

The proposed rules that would require an SBSEF to maintain surveillance systems and to monitor trading¹² are designed to promote compliance by an SBSEF with its obligations under the SEA to oversee trading on its market, and to prevent manipulation and other unlawful activity or disruption of its market

3. Consideration Given to Improved Information Technology

Under, the proposed rule, various provisions would require registered SBSEFs (or SBSEF applicants) to file specified information electronically with the Commission, in a form and manner required by the Commission. The Commission is proposing to require such filings to be made electronically through its EDGAR system using a structured data language. Requiring SBSEFs to file this information in EDGAR would provide the Commission and the public with a centralized, publicly accessible electronic database for the information, thereby facilitating its use. EDGAR would also enable technical validation of the disclosures, thus potentially reducing the incidence of non-discretionary errors (*e.g.*, including text for a disclosure that should contain only numbers). Moreover, requiring Inline XBRL tagging of the reported disclosures would facilitate retrieval, aggregation, and comparison of the reported information across different SBSEFs and time periods.

4. Duplication

The proposed amendments would not result in, or require the collection of, duplicate information that is otherwise available in a similar form.

5. Effects on Small Entities

Most of proposed Regulation SE, and the related rules and rule amendments, would apply to registered SBSEFs (or entities that are seeking to register with the Commission as SBSEFs). In the Dodd-Frank Act, Congress defined SBSEFs as a new type of trading venue for SBS and mandated the registration of these entities. The Commission preliminarily believes that most, if not all, SBSEFs would be large business entities or subsidiaries of large business entities, and

¹² See, *e.g.*, proposed Rule 819(d)(3) (requiring an SBSEF to establish and maintain sufficient compliance staff and resources).

that every SBSEF (or its parent entity) would have assets in excess of \$5 million and annual receipts in excess of \$41,500,000. Therefore, the Commission preliminarily believes that none of the potential SBSEFs would be considered small entities.

Proposed Rule 833 would describe how foreign SBS trading venues could become exempt from the SEA definitions of “exchange,” “security-based swap execution facility,” and “broker” and how SBS executed on a foreign trading venue could become exempt from the SEA’s trade execution requirement. These requests would likely be submitted by foreign SBS trading venues, foreign authorities that license and regulate those trading venues, or covered persons (as defined in proposed Rule 832) who are members of such trading venues. Based on the Commission’s existing information about the SBS market, the Commission preliminarily believes that no person likely to request an exemption order pursuant to proposed Rule 833 would be considered a small entity. The Commission preliminarily believes that most, if not all, of the persons requesting exemptions would be large business entities or subsidiaries of large business entities, and on its own, or through its parent entity, would have assets in excess of \$5 million (or in the case of a broker-dealer, total capital of less than \$500,000) and annual receipts in excess of \$41,500,000.

Certain rules proposed in Regulation SE would apply to SBS exchanges. Based on the Commission’s existing information about national securities exchanges, the Commission preliminarily believes that the entities likely to be considered SBS exchanges would not be considered small entities. The Commission preliminarily believes that any SBS exchange would have annual receipts in excess of \$41,500,000.

6. Consequences of Not Conducting Collection

As mentioned above, the information collected pursuant to these proposed rules would enhance the ability of the Commission to determine whether to approve the registration of an entity as an SBSEF; to monitor and oversee SBSEFs; to determine that SBSEFs initially comply, and continue to operate in compliance, with the SEA, including the Core Principles applicable to SBSEFs; to carry out its statutorily mandated oversight functions; and to maintain accurate and updated information regarding SBSEFs. Because the registration information would be publicly available, it could also be useful to an SBSEF’s members, other market participants, other regulators, and the public generally. Absent the collection, these goals would become much more difficult if not impossible to accomplish.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

The proposed rule require an SBSEF to maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of five years. This time period is consistent with existing requirements for national securities exchanges and national securities associations pursuant to Rule 17a-1 under the SEA.¹³ There are no other special circumstances, and this collection is otherwise consistent with the guidelines in 5 CFR 1320.5(d)(2).

¹³ See 17 CFR 242.17a-1.

8. Consultations Outside the Agency

In developing this proposal, the Commission has consulted and coordinated with the CFTC, in accordance with the consultation mandate of the Dodd-Frank Act.¹⁴ The Commission has issued a release soliciting comment on the proposed rules and associated paperwork burdens. A copy of the release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission's public website and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 CFR 1320.11(f).

9. Payment or Gift

No payment or gift is provided to respondents.

10. Confidentiality

The information collection does not collect personally identifiable information. The agency has determined that neither a PIA nor a SORN are required in connection with the collection of information.

11. Sensitive Questions

Under the proposed rule, certain submissions will require the name and title of a duly authorized person to make submissions for the respondents. The name and title are the only personally identifiable information to be collected. Therefore, a SORN and a PIA are not required for this information collection.

¹⁴ Section 712(a)(2) of the Dodd-Frank Act provides in relevant part that the Commission shall “consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.” In addition, Section 752(a) of the Dodd-Frank Act provides in relevant part that “[i]n order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators . . . as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps.”

12. Burden of Information Collection

The proposed amendment would establish 12 new collections of information, which are listed in the chart below. The proposed new hour burdens would be a program change due to agency discretion as they would result from Commission rules proposed under the Exchange Act. Each of the collections of information is explained further in the discussion following the chart.

| Name of Information Collection | Type of Burden ¹⁵ | Number of Entities Impacted | Small Business Entities Affected | Initial Burden Annualized per Entity per Response | Ongoing Burden per Entity per Response | Response per Year | Total Annual Burden Per Entity | Total Annual Industry Burden |
|--|------------------------------|-----------------------------|----------------------------------|---|--|-------------------|--------------------------------|------------------------------|
| Registration (Rule 803, Form SBSEF) | Reporting | 5 | 0 | 98.33 ¹⁶ | 0 | 1 | 98.33 | 491.67 |
| Rules modelled on CFTC Part 37 (other than registration) | Reporting | 5 | 0 | 0 | 387 | 1 | 387 | 1,935 |
| Rule and product filing processes including cover sheet (Rules 804-807) modelled on CFTC Part 40 | Reporting | 5 | 0 | 0 | 60 | 1 | 60 | 300 |
| Proposed Rule 809 | Reporting | 5 | 0 | 0 | 0.25 | 1 | 0.25 | 1.25 ¹⁷ |
| Proposed Rule 811(d) | Reporting | 5 | 0 | 0 | 0.2 | 1 | 0.2 | 1 |
| Proposed Rule 819(i) | Reporting | 5 | 0 | 0 | 79.83 | 1 | 79.83 | 399.15 |
| Proposed Rule 819(j) | Reporting | 5 | 0 | 0 | .5 | 1 | .5 | 2.5 ¹⁸ |
| Proposed Rule 826(f) | Recordkeeping | 5 | 0 | 0 | .4 | 1 | .4 | 2 |
| Proposed Rule 833 | Reporting | 7 | 0 | 26.66 | 0 | 1 | 26.66 | 186.67 |
| Proposed Rule 834(b)-(c) | Recordkeeping | 8 | 0 | 5 ¹⁹ | 0 | 1 | 5 | 40 |
| Proposed Rule 834(d)-(g) | Reporting | 8 | 0 | 0 | 3.25 | 1 | 3.25 | 26 |
| Proposed Rule 835 | Reporting | 5 | 0 | 0 | 0.75 | 12 | 9 | 45 |

¹⁵ The Commission notes that certain collections can contain characteristics of reporting, third-party disclosure, and/or recordkeeping. In such instances, Commission staff made a determination as to which is the predominant characteristics and classified the collection as such.

¹⁶ This represents an initial burden of 295 hours discussed in the Regulation SE Proposing Release, supra note 1, at 28964, divided by three for the length of the three year renewal period.

¹⁷ This rounds down to 1 hour in OMB's ROCIS system.

¹⁸ This rounds up to 3 hours in OMB's ROCIS system.

¹⁹ This represents an initial burden of 15 hours discussed in the Regulation SE Proposing Release, supra note 1, at 28967, divided by three for the length of the three year renewal period.

a. Registration (Rule 803, Form SBSEF)

A submission by an entity wishing to register with the Commission as an SBSEF would be required to be made on Form SBSEF, pursuant to proposed Rule 803, on a one-time basis. The Commission preliminarily estimates that five entities initially would seek to register with the Commission as SBSEFs. These entities would incur initial, one-time burdens for registration, because once an entity is registered as an SBSEF, its registration obligations are complete. The Commission's estimate regarding the initial burden that an entity would incur to file a Form SBSEF is informed by the estimates made by the CFTC for the completion of Form SEF and compliance with § 37.3 of the CFTC regulations (which governs registration of SEFs). Proposed Form SBSEF would request almost exactly the same information as required by Form SEF. Proposed Rule 803 is substantially similar to § 37.3. The CFTC has estimated that the initial compliance burden associated with its registration requirements in § 37.3 and Form SEF to be 295 hours per SEF applicant (or 98.33 hours, *i.e.*, 295 divided by 3 for the three-year renewal period).²⁰ For purposes of calculating burden hours, the CFTC considered the entire SEF application process to constitute a single information collection; the Commission is utilizing the same approach for SBSEFs.

The Commission preliminarily estimates that each Respondent would incur an initial one-time annual reporting burden of approximately 98.33 hours, for an aggregate initial one-time annual industry reporting burden for all five Respondents of approximately 491.67 hours.²¹

b. Rules modelled on CFTC Part 37 (other than registration)

The CFTC has estimated that the compliance burden for all of the sections of Part 37 combined, other than the initial burden of 295 hours per SEF for registration-related compliance discussed above, to be an ongoing annual burden of 387 hours per SEF.²² With exception of § 37.600, which implements a CEA Core Principle for SEFs relating to position limits that is not in the SEA, every other section of Part 37 has an analog in proposed Regulation SE that is substantively similar.²³ Therefore, the Commission preliminarily estimates that the aggregate

²⁰ See OMB, Supporting Statement for New and Revised Information Collections: Core Principles and Other Requirements for Swap Execution Facilities, OMB Control Number 3038-0074, Attachment A (July 7, 2021), available at <https://omb.report/icr/202107-3038-004/doc/113431800.pdf>.

²¹ 98.33 hours per respondent x 5 respondents = 491.67 hours.

²² See OMB, Supporting Statement for New and Revised Information Collections, OMB Control Number 3038-0074, at 8 (estimating that on a net basis the total burden hours imposed on each SEF will be 387 hours).

²³ Portions of the CFTC guidance have been incorporated into certain rules being proposed by the Commission in Regulation SE. The CFTC guidance clarifies portions of its rules by suggesting means for compliance and does not fundamentally alter those rules.

CFTC estimate of 387 hours per SEF per year serves as a reasonable estimate for the annual hourly burden on each SBSEF. For reference, the following table lists all sections of Part 37 not related to registration and the corresponding proposed SBSEF rule.

| CFTC Part 37 Section (387 aggregate burden hours per SEF not including § 37.3 (registration)) | Topic | Analogous SBSEF Rule # (387 aggregate burden hours per SBSEF not including proposed Rule 803 (registration) and certain other rules not modelled on Part 37 rules (discussed separately in the following sections)) |
|---|---|---|
| 37.1 | scope | 800 |
| 37.2 | applicable provisions | 801 |
| 37.4 | procedures for listing products | 810 |
| 37.5 | compliance | 811 |
| 37.6 | enforceability | 812 |
| 37.7 | prohibited use of data | 813 |
| 37.8 | entities operating as SEFs and DCMs | 814 |
| 37.9 | methods of execution | 815 |
| 37.10 | process to make swaps available for trade | 816 |
| 37.11 | reserved section | not applicable |
| 37.12 | trade execution compliance schedule | 817 |
| 37.100 | CP 1 (compliance with Core Principles) | 818 (CP1) |
| 37.200-37.206 | CP 2 (compliance with rules) | 819 (CP2) |
| 37.300-37.301 | CP 3 (manipulation) | 820 (CP3) |
| 37.400-37.408 | CP 4 (monitoring of trading and trade processing) | 821 (CP4) |
| 37.500-37.504 | CP 5 (ability to obtain information) | 822 (CP5) |
| 37.600-37.601 | CP 6 (position limits) | no equivalent requirement in the SEA; CP numbering diverges after this point |

Therefore, the Commission believes that no adjustments to the CFTC estimates, on which the Commission is basing its own estimates, would be appropriate despite adapting that guidance into the Commission's proposed rules.

| | | |
|-----------------------|--|---|
| 37.700-37.703 | CP 7 (financial integrity of transactions) | 823 (CP6) |
| 37.800-37.801 | CP 8 (emergency authority) | 824 (CP7) |
| 37.900-37.901 | CP 9 (publication of trading information) | 825 (CP 8) |
| 37.1000-37.1001 | CP 10 (recordkeeping and reporting) | 826 (CP 9) |
| 37.1100-37.1101 | CP 11 (anti-trust) | 827 (CP10) |
| 37.1200 | CP 12 (conflicts of interest) | 828 (CP 11) |
| 37.1300-37.1307 | CP 13 (financial resources) | 829 (CP 12) |
| 37.1400-37.1401 | CP 14 (system safeguards) | 830 (CP 13) |
| 37.1400-1501 | CP 15 (CCO) | 831 (CP 14) |
| Appendix A (Form SEF) | Form SEF | Form SBSEF ²⁴ |
| Appendix B | Guidance relating to Core Principles | Guidance incorporated throughout proposed rules 818-831 |

The Commission preliminarily estimates that each Respondent would incur an ongoing reporting burden of approximately 387 hours, for an aggregate annual industry reporting burden for all five Respondents of approximately 1,935 hours.²⁵

- c. Rule and product filing processes including cover sheet (Rules 804-807) modelled on CFTC Part 40

A number of rules contained in Proposed Regulation SE are modelled after rules in Part 40 of the CFTC’s rules, including §§ 40.2 (Listing products for trading by certification), 40.3 (Voluntary submission of new products for Commission review and approval), 40.5 (Voluntary submission of rules for Commission review and approval), and 40.6 (Self-certification of rules). The Commission is proposing Rules 804, 805, 806, and 807—which are closely modelled on §§ 40.2, 40.3, 40.5, and 40.6, respectively—in order to harmonize with the procedures that the CFTC applies to SEFs with respect to establishing new rules and listing products. In addition, proposed Rule 808 is modelled after § 40.8 and would provide that certain information in a Form SBSEF application or a rule or product filing would be made publicly available, notwithstanding the SBSEF’s request for confidential treatment.

The Commission preliminarily estimates that each Respondent would incur an ongoing reporting burden of approximately 60 hours, for an aggregate annual industry reporting burden for all five Respondents of approximately 300 hours.²⁶

²⁴ The burdens of registering using Form SBSEF are discussed in the previous section.

²⁵ 387 hours per respondent x 5 respondents = 1,935 hours.

²⁶ 60 hours per respondent x 5 respondents = 300 hours.

d. Proposed Rule 809

Proposed Rule 809 is loosely modelled on § 40.12 of the CFTC's rules and would set forth a mechanism for addressing a situation where an SBSEF wishes to list a novel derivative product and it is unclear whether the product properly falls under the jurisdiction of the SEC or the CFTC. Proposed Rule 809 would provide a mechanism for the staying or tolling of a filing by an SBSEF relating to a product while the appropriate jurisdictional classification of that product is determined.

The Commission preliminarily estimates that each Respondent would incur an ongoing reporting burden of approximately .25 hour, for an aggregate annual industry reporting burden for all five Respondents of approximately 1.25 hours.²⁷

e. Proposed Rule 811(d)

§ 1.60 of the CFTC's rules requires a SEF to provide the CFTC with copies of any legal proceeding to which it is a party, or to which its property or assets is subject. Paragraph (d) of proposed Rule 811 would adapt paragraphs (a), (c), and (e) of § 1.60 to apply to SBSEFs. Subparagraph (d)(1) would require an SBSEF to provide the Commission a copy of the complaint, any dispositive or partially dispositive decision, any notice of appeal filed concerning such decision, and such further documents as the Commission may thereafter request filed in any material legal proceeding to which the SBSEF is a party or its property or assets is subject. Subparagraph (d)(2) would require an SBSEF to provide notices of similar actions against any officer, director, or other official of the SBSEF from conduct in such person's capacity as an official of the SBSEF alleging violations of certain enumerated actions.

The Commission preliminarily estimates that each Respondent would incur an ongoing reporting burden of approximately 0.2 hours, for an aggregate annual industry reporting burden for all five Respondents of approximately 1 hour.²⁸

f. Proposed Rule 819(i)

Paragraph (i) of proposed Rule 819 would bar persons with specified disciplinary histories from serving on the governing board or committees of an SBSEF, and impose certain other duties on the SBSEF associated with that fundamental requirement. Proposed Rule 819(i) is modelled on § 1.63 of the CFTC's rules. The Commission preliminarily estimates that an SBSEF would provide the information required by proposed Rule 819(i) once per year, and that each submission would take 79.83 hours. The Commission is basing its estimate on the one that the CFTC included in its submission to OMB for its adoption of § 1.63, where the CFTC estimated that each respondent would make, on average, one submission to the CFTC per year.

²⁷ .25 hour per respondent x 5 respondents = 1.25 hours.

²⁸ 0.2 hours per respondent x 5 respondents = 1 hour.

The CFTC further estimated that the time required to prepare one submission is approximately 79.83 hours.²⁹

The Commission preliminarily estimates that each Respondent would incur an ongoing reporting burden of approximately 79.83 hours, for an aggregate annual industry reporting burden for all five Respondents of approximately 399.15 hours.³⁰

g. Proposed Rule 819(j)

Paragraph (j) of proposed Rule 819 is modelled on § 1.67 of the CFTC's rules. Rule 819(j)(1) would provide that, upon any final disciplinary action in which an SBSEF finds that a member has committed a rule violation that involved a transaction for a customer, whether executed or not, and that resulted in financial harm to the customer, the SBSEF must promptly provide written notice of the disciplinary action to the member.

The Commission preliminarily estimates that an SBSEF would need 0.5 hours to prepare a notice and provide it to a member. This estimate is based on a previous Commission estimate for the time that it would take to prepare and submit a simple notice.³¹ The Commission estimates that these notices would occur once per year at each SBSEF. The estimate of once per year is based on a previous CFTC estimate included in its submission to OMB for § 1.67 along with other rules.

The Commission preliminarily estimates that each Respondent would incur an ongoing reporting burden of approximately 0.5 hours, for an aggregate annual industry reporting burden for all five Respondents of approximately 2.5 hours.³²

h. Proposed Rule 826(f)

Proposed Rule 826(f) is modelled on CFTC § 1.37(c) and would require an SBSEF to keep a record in permanent form, which shall show the true name, address, and principal occupation or business of any non-U.S. member that executes transactions on the SBSEF and must, upon request, provide to the Commission information regarding the name of any person

²⁹ See CFTC, *Service on Self-Regulatory Organization Governing Boards or Committees by Persons with Disciplinary Histories* (February 27, 1990), 55 FR 7884, 7890 (March 6, 1990) (final rule PRA for § 1.63).

³⁰ 79.83 hours per respondent x 5 respondents = 399.15 hours.

³¹ Proposed Rule 819(j) would not address any of the requirements or process concerning taking final disciplinary actions; it merely would require that a notice be provided. A provision of Regulation SCI, Rule 1000(b)(4)(i), also requires providing a simple notice and the Commission estimated that it would take 0.5 hours to prepare and such a notice. See *Regulation Systems Compliance and Integrity; Final Rule*, SEA Release No. 73639 (November 19, 2014), 79 FR 72251, 72381 (December 5, 2014).

³² 0.5 hours per respondent x 5 respondents = 2.5 hours.

guaranteeing such transactions or exercising any control over the trading of such non-U.S. member.

The Commission preliminarily estimates that each SBSEF would need to update information required by Rule 826(f) once per year, and that each submission would take 0.4 hours. The Commission is basing its estimate on the estimate included by the CFTC in its submission to OMB regarding § 1.37(c) of the CFTC's rules, where the CFTC estimated that it would take a SEF 0.4 hours to prepare each record in accordance with regulation § 1.37(c).

The Commission preliminarily estimates that each Respondent would incur an ongoing recordkeeping burden of approximately 0.4 hours, for an aggregate annual industry recordkeeping burden for all five Respondents of approximately 2 hours.³³

i. Proposed Rule 833

Proposed Rule 833 would describe how foreign SBS trading venues (or persons acting on their behalf) could obtain exemptions from the SEA definitions of “exchange,” “security-based swap execution facility,” and “broker” and how SBS executed on a foreign trading venue could become exempt from the SEA's trade execution requirement. Based on the CFTC's experience in the SEF market, the Commission preliminarily estimates that there would be three requests for an exemption order under either or both paragraphs (a) and (b) of Rule 833 in the first year and 2 requests in each subsequent year; and that each submission would require an initial, one-time burden of 80 hours.³⁴ Once an exemption has been granted to an applicant, no further action is required. Therefore, during the renewal period, the Commission estimates 7 respondents (3 in year 1, 2 in year 2, and 2 in year 3). All 7 respondents will not incur burdens immediately at the beginning on the renewal period, however, as a conservative estimate, and because it is not certain when respondents will incur burdens, the Commission is assuming that all 7 respondents will incur the 80 hour burden (80 hours total, 26.67 hours annualized over the three-year renewal period).

The Commission preliminarily estimates that each Respondent would incur an initial one-time annualized reporting burden of approximately 26.67 hours, for an aggregate initial one-time annualized industry reporting burden for all seven Respondents of approximately 186.67 hours.³⁵

j. Proposed Rule 834(b)-(c)

Proposed Rule 834 would provide that each SBSEF and SBS exchange must create and maintain rules to mitigate conflicts of interest between SBSEFs and SBS exchanges and their members, including by prohibiting members from owning 20% or more of the voting rights of an

³³ 0.4 hours per respondent x 5 respondents = 2 hour.

³⁴ See Regulation SE Proposing Release, supra note 1, at 28968.

³⁵ 26.67 hours per respondent x 7 respondents = 186.67 hours.

SBSEF or SBS exchange and from exercising disproportionate influence in disciplinary proceedings. Proposed Rule 834 also would require each SBSEF and SBS exchange to submit to the Commission after every governing board election a list of each governing board's members, the groups they represent, and how the composition of the board complies with the requirements of Rule 834. Paragraph (b) sets forth details concerning the 20% cap and paragraph (c) would include requirements designed to reinforce the 20% cap in paragraph (b). The Commission preliminarily estimates that proposed Rules 834(b) and (c) together would have an initial, one-time paperwork burden of 15 hours per entity, or 5 hours annualized (*i.e.*, 15 hours divided by three for the three-year renewal period), associated with drafting and implementing any such rules. The estimated number of entities is 8.³⁶

The Commission preliminarily estimates that each Respondent would incur an initial one-time annual recordkeeping burden of approximately 5 hours, for an aggregate initial one-time annual industry recordkeeping burden for all eight Respondents of approximately 40 hours.³⁷

k. Proposed Rule 834(d)-(g)

Paragraph (d) of proposed Rule 834 is designed to mitigate conflicts of interest in the disciplinary process of an SBSEF or SBS exchange. Paragraph (e) would require each SBSEF and SBS exchange to ensure that 20% or more of the persons who are eligible to vote routinely on matters being considered by the governing board are persons who are knowledgeable of SBS trading or financial regulation, or otherwise capable of contributing to governing board deliberations. It would also require each SBSEF and SBS exchange to ensure that membership of its governing board includes a diversity of groups or classes of its members. Paragraph (f) of proposed Rule 834 would require each SBSEF and SBS exchange to submit to the Commission, within 30 days after each governing board election, a list of the governing board's members, the groups or classes of members that they represent, and how the composition of the governing board otherwise meets the requirements of Rule 834. Paragraph (g) of proposed Rule 834 would require an SRO to further address the avoidance of conflicts of interest in the execution of its self-regulatory functions.

The Commission preliminarily estimates that each Respondent would incur an ongoing reporting burden of approximately 3.25 hours, for an aggregate annual industry reporting burden for all eight Respondents of approximately 26 hours.³⁸

l. Proposed Rule 835

Proposed Rule 835 would provide that, if an SBSEF issues a final disciplinary action against a member, or takes final action with respect to a denial or conditioning membership, or

³⁶ These entities consist of 5 SBSEFs and 3 SBS exchanges.

³⁷ 15 hours per respondent x 8 respondents = 120 hours.

³⁸ 3.25 hours per respondent x 8 respondents = 26 hours.

takes final action with respect to a denial or limitation of access of a person to any services offered by the SBSEF, the SBSEF shall file a notice of such action with the Commission within 30 days and serve a copy on the affected person. The Commission preliminarily estimates that it would take 0.5 hours to prepare this notice and provide it to the Commission and the affected person. This estimate is based on a previous Commission estimate for the time that it would take to prepare and submit a simple notice.³⁹ The Commission preliminarily believes that it would take an additional 0.25 hours to create and serve a copy of that notice on the affected person. The Commission estimates that there would be 5 respondents. The Commission estimates that each respondent would make a response monthly resulting in 12 response per year per respondent.

The Commission preliminarily estimates that each Respondent would incur an ongoing reporting burden of approximately 9 hours, for an aggregate annual industry reporting burden for all five Respondents of approximately 45 hours.⁴⁰

13. Costs to Respondents

The Commission does not estimate any costs to respondents.

14. Cost to Federal Government

The federal government would not incur a cost in connection with the collection of this information.

15. Changes in Burden

Not applicable.

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.

³⁹ A provision of Regulation SCI, Rule 1000(b)(4)(i), also requires providing a simple notice and the Commission estimated that it would take 0.5 hours to prepare and such a notice. *See Regulation Systems Compliance and Integrity; Final Rule*, SEA Release No. 73639 (November 19, 2014), 79 FR 72251, 72381 (December 5, 2014).

⁴⁰ 12 responses annually (once per month) per respondent x .75 hours per response x 5 respondents = 45 hours.

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.