

**SUPPORTING STATEMENT for the Paperwork Reduction Act Information Collection  
Submission for Rule 18a-4 – Segregation requirements for security-based swap dealers and  
major security-based swap participants.  
3235-0700**

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 *et seq.*

**A. JUSTIFICATION**

**1. Information Collection Necessity**

On June 21, 2019, in accordance with Section 763 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”),<sup>1</sup> which added section 15F to the Securities Exchange Act of 1934 (the “Exchange Act”),<sup>2</sup> the Securities and Exchange Commission (the “Commission”) adopted Rule 18a-4 to set forth segregation requirements for security-based swap dealers (“SBSDs”) and major security-based swap participants (“MSBSPs”) that are not registered as broker-dealers.<sup>3</sup> The rule establishes a number of new collections of information requirements.

Rule 18a-4 establishes segregation requirements for cleared and non-cleared security-based swap transactions, which applies to non-broker-dealer SBSDs (*i.e.*, bank SBSDs and nonbank stand-alone SBSDs), as well as notification requirements for non-broker-dealer SBSDs and MSBSPs.<sup>4</sup> The rule requires non-broker-dealer SBSDs to open and maintain special accounts with banks and obtain written acknowledgements from, and enter into written contracts with, the banks. Non-broker-dealer SBSDs are also required to at all times maintain in a special account, through deposits into the account, cash and/or qualified securities in amounts computed in accordance with the formula set forth in Exhibit A to Rule 18a-4. The rule also requires that the computations necessary to determine the amount required to be maintained in the special bank account must be made on a weekly basis.

In addition, the rule requires that both non-broker-dealer SBSDs and MSBSPs provide notice to a counterparty pursuant to Section 3E(f) of the Exchange Act prior to the execution of the first non-cleared security-based swap transaction with the counterparty occurring after the effective date of the adopted rule. The rule also requires non-broker-dealer SBSDs to obtain agreements from counterparties that do not choose to require segregation of funds or other property pursuant to Section 3E(f) of the Exchange Act or paragraph (c)(3) of Rule 18a-4 in

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<sup>1</sup> See *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Public Law 111-203, 124 Stat. 1376 (2010).

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

<sup>3</sup> See *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, Exchange Act Release No. 86175.

<sup>4</sup> The Commission has also adopted amendments to Rule 15c3-3 under the Exchange Act (17 CFR 240.15c3-3) to establish segregation requirements for broker-dealers, including broker-dealer SBSDs that are parallel to the requirements in Rule 18a-4 applicable to SBSDs that are not broker-dealers.

which the counterparty agrees to subordinate all of its claims against the SBSB to the claims of security-based swap customers of the SBSB. Finally, Rule 18a-4 also requires all registered foreign SBSBs that enter into security-based swaps to provide counterparties that are not U.S. persons certain disclosures regarding the potential treatment of their collateral and the role of U.S. and foreign law in any insolvency proceedings.<sup>5</sup>

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

Rule 18a-4 is integral to the Commission's financial responsibility program for SBSBs as it is designed to protect the rights of security-based swap customers and their ability to promptly obtain their property from an SBSB. The collection of information requirements in the rule facilitates the process by which the Commission and its staff monitor how SBSBs are fulfilling their custodial responsibilities to security-based swap customers. Rule 18a-4 also requires that an SBSB provide certain notices to its counterparties.<sup>6</sup> These notices alert counterparties to the alternatives available to them with respect to segregation of non-cleared security-based swaps. The Commission and its staff will use this new collection of information to confirm that registrants are providing the requisite notice to counterparties.

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

The information collections do not require that respondents use any specific information technology system either to prepare or submit information collections under Rule 18a-4.

## **4. Duplication**

This information collection does not duplicate any existing information collection.

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

The information collections required under Rule 18a-4 do not place burdens on small entities. The information collections are relevant only to market participants whose security-based swap market activity exceeds certain thresholds of notional amounts so as to trigger registration requirements with the Commission, such that small market participants are exempted.

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

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

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

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

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<sup>5</sup> See paragraph (e) of Rule 18a-4.

<sup>6</sup> See paragraphs (a) and (c) of Rule 18a-4.

## 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

No payment or gift is provided to respondents.

## 10. Confidentiality

The information collected by the Commission under Rule 18a-4, as adopted, is kept confidential to the extent permitted by the Freedom of Information Act (5 U.S.C. § 552 *et seq.*).

## 11. Sensitive Questions

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 information collection.

## 12. Burden of Information Collection

### Special Accounts (Rule 18a-4(a))

Rule 18a-4 requires non-broker-dealer SBSBs to establish certain special accounts with banks and obtain written acknowledgements from, and enter written agreements with, those banks. These special accounts include: (1) qualified clearing agency accounts; (2) qualified SBSB accounts; and (3) special accounts for the exclusive benefit of security-based swap customers (collectively, the “special accounts”). There are currently two non-broker-dealer SBSBs. The Commission previously estimated that there would be three non-broker-dealer SBSBs. The Commission does not expect that there will be any new non-broker-dealer SBSBs in the next three years, but the Commission estimates that any new firm would have to open an average of 6 special accounts (2 for each type of special account). Based on the Commission staff’s experience with similar requirements under Rule 15c3-3, the staff estimates that each non-broker-dealer SBSB will spend approximately 30 hours drafting and obtaining the written acknowledgement and agreement for each account. As there are no new respondents, at this time there is no industry-wide one-time burden associated with this requirement. (IC1)

The staff also estimates that 25% of non-broker-dealer SBSBs (or 1 SBSB) will, in any given year, establish a new account for each type of special account totaling 3 special accounts a year (and it takes 30 hours to draft and obtain the written acknowledgment and agreement for each account) because, for example, they changed their banking relationships. **This will result in an ongoing industry-wide burden of 90 recordkeeping hours per year.**<sup>7</sup> (IC2)

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<sup>7</sup> 1 non-broker-dealer SBSB x 3 special accounts x 30 hours = 90 hours.

### Customer Reserve Computation (Rule 18a-4(c))

Rule 18a-4 requires SBSDs to perform weekly computations of the customer reserve amount, and ensure that the relevant special accounts hold sufficient cash and/or qualified securities to meet that amount. Based on the staff's experience with similar computations performed by broker-dealers under Rule 15c3-3, the staff estimates that each of the two non-broker-dealer SBSDs will spend on average 2.5 hours per week for each computation. **This will result in an ongoing industry-wide burden of 260 recordkeeping hours per year.**<sup>8</sup> (IC3)

### Counterparty Notice (Rule 18a-4(d)(1))

Both non-broker-dealer SBSDs and MSBSPs are required under Rule 18a-4 to give counterparties notice that they may elect segregation of their collateral, as required by the Dodd-Frank Act. This notice is given once, prior to the counterparty's first trade with the non-broker-dealer SBSD or MSBSP. All non-broker-dealer SBSDs and MSBSPs are subject to this requirement, and there are 40 such firms. The staff previously estimated that there would be 38 such firms. The staff estimates that the two new firms will have an average of 1,000 counterparties to which they would have to send notices, spending an average of ten minutes per counterparty. **This will result in a one-time burden for the two new firms of 120 third party disclosure hours per year (when annualized over 3 years).**<sup>9</sup> (IC4)

The staff estimates that, on average, non-broker-dealer SBSDs and MSBSPs will initiate security-based swap trading with 200 new counterparties per year. **This will result in an ongoing industry-wide burden of 1,360 third-party disclosure hours per year.**<sup>10</sup> (IC5)

### Subordination Agreements (Rule 18a-4(d)(2))

Rule 18a-4 requires that non-broker-dealer SBSDs obtain subordination agreements from counterparties that elect to either require individual segregation with a third-party or waive segregation. There are currently two non-broker-dealer SBSDs. The Commission previously estimated that there would be three non-broker-dealer SBSDs. The Commission does not expect that there will be any new non-broker-dealer SBSDs in the next three years, but the Commission estimates that any new firm would spend on average 200 hours internally to draft and prepare standard subordination agreements. As there are no new respondents, at this time there is no industry-wide one-time burden associated with this requirement. (IC6)

As discussed above, the staff estimates that non-broker-dealer SBSDs will on average have approximately 1,000 counterparties at any given time. The staff further estimates that half of these counterparties will either elect individual segregation or waive segregation altogether. The staff estimates that the two non-broker-dealer SBSDs will each spend an average of 20 hours per counterparty to enter into a written subordination agreement for each of the 500 counterparties. As stated above, as there are no new respondents, at this time there is no

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<sup>8</sup> 52 weeks x 2.5 hours/week = 130 hours. 2 non-broker-dealer SBSDs x 130 hours = 260 hours.

<sup>9</sup> Each response is 1/6 hour = .1667 hours, rounded to .17 hours. This amount annualized over 3 years is .056 hours, rounded to .06 hours. 2 firms x 1,000 counterparties x .06 hours = 120 hours.

industry-wide one-time burden associated with this requirement. (IC7)

The staff also estimates that half of the estimated 200 new counterparties non-broker-dealer SBSBs are expected to add per year will either elect individual segregation or waive segregation altogether. **This will result in an ongoing industry-wide burden of 4,000 third-party disclosure hours per year.**<sup>11</sup> (IC8)

#### Disclosures to U.S. Counterparties (Rule 18a-4(e)(3))

Rule 18a-4 requires registered foreign SBSBs to provide disclosures to their U.S. counterparties regarding the potential treatment of segregated assets in insolvency proceedings. There are 29 registered foreign SBSBs. The staff previously estimated that there would be 22 registered foreign SBSBs. The staff estimates that there will be up to 30 potential jurisdictions in which trade associations or industry working groups may be able to develop standard disclosure forms that can be adopted by foreign SBSBs with little or no modification. The Commission estimates that each notice will require 5 hours of in-house counsel time for each agreement jurisdiction. **This will result in a one-time burden for the seven new registered foreign SBSBs of 351 third-party disclosure hours per year (when annualized over 3 years).**<sup>12</sup> (IC9)

As stated above, there are seven new registered foreign SBSBs and the Commission estimates that each new foreign SBSB will have 50 active non-U.S. counterparties. The Commission further estimates that the total paperwork burden associated with incorporating new disclosure language into each foreign SBSB's trading documentation will require 10 hours of in-house counsel time for each of the firm's 50 active non-U.S. counterparties. **This will result in a one-time burden for the seven new firms of 1,166 third-party disclosure hours per year (when annualized over 3 years).**<sup>13</sup> (IC10)

The Commission also estimates that each of the 29 foreign SBSBs will spend 5 hours a year updating these disclosures. **This will result in an ongoing industry-wide burden of 145 third-party disclosure hours per year.**<sup>14</sup> (IC11)

#### Exemptions (Rule 18a-4(f))

There are currently 31 bank SBSBs and stand-alone nonbank SBSBs. The Commission previously estimated that there would be 31 such firms. The Commission does not expect that there will be any new such firms in the next three years, but the Commission estimates that for any new firm the paperwork burden associated with developing new disclosure language under paragraph (f)(3) of Rule 18a-4 will be 5 hours of in-house counsel time. This estimate assumes

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<sup>11</sup> 2 non-broker-dealer SBSBs x 20 hours x 100 counterparties = 4,000 hours. The annual burden per respondent is 2,000 hours per year.

<sup>12</sup> 5 hours annualized over 3 years is 1.67 hours. 30 jurisdictions x 7 foreign SBSBs x 1.67 hours = 350.7 hours, rounded to 351 hours.

<sup>13</sup> 10 hours annualized over 3 years is 3.33 hours. 3.33 hours x 50 counterparties x 7 foreign SBSBs = 1,165.5 hours, rounded to 1,166 hours.

<sup>14</sup> 5 hours x 29 foreign SBSBs = 145 hours, or 5 hours per foreign SBSB.

little or no reliance on standardized disclosure language. As there are no new respondents, at this time there is no industry-wide one-time burden associated with this requirement. (IC12)

In addition, the Commission estimates that the average SBSB will have approximately 1,000 counterparties at any given time. As stated above, the Commission estimates that the burden associated with incorporating new disclosure language into the trading documentation of an SBSB will require 10 hours of in-house counsel time. As stated above, as there are no new respondents, at this time there is no industry-wide one-time burden associated with this requirement. (IC13)

Furthermore, the Commission expects that the majority of the paperwork burden associated with the new disclosure requirements under paragraph (f)(3) of Rule 18a-4 will be experienced during the first year as language is developed. After the new disclosure language is developed and incorporated into trading documentation, the Commission believes that the ongoing burden associated with paragraph (f)(3) will be limited to periodically updating the disclosures. **This will result in an ongoing industry-wide burden of 155 third-party disclosure hours per year.**<sup>15</sup> (IC14)

Summary of Hourly Burdens <sup>16</sup>										
IC	Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Initial Burden Annualized per Entity per Response	Ongoing Burden per Entity per Response	Annual Burden Per Entity per Response	Total Annual Burden Per Entity	Total Industry Burden
1	Rule 18a-4(a) (Special Accounts)—Initial Burden	Recordkeeping	0	6	30.00	10.00	0	10	60.00	0
2	Rule 18a-4(a) (Special Accounts)—Ongoing Burden	Recordkeeping	1	3	0	0	30.00	30.00	90.00	90
3	Rule 18a-4(c) (Customer Reserve Computation)—Ongoing Burden	Recordkeeping	2	52	0	0	2.50	2.50	130.00	260
4	Rule 18a-4(d)(1) (Counterparty Notice)—Initial Burden	Third-Party	2	1,000	.17	.06	0	.06	60	120

<sup>15</sup> 31 SBSBs x 5 hours per SBSB = 155 hours, or 5 hours per SBSB.

<sup>16</sup> The hour burdens in this chart have been separated out by both type of burden (e.g., recordkeeping, reporting, or third-party/disclosure), and whether the burden is an initial burden or an ongoing one. These burdens have been collapsed in ROCIS.

5	Rule 18a-4(d)(1) (Counterparty Notice)— Ongoing Burden	Third-Party	40	200	0	0	.17	.17	34	1,360
6	Rule 18a-4(d)(2) (Subordinations Agreements, Drafting)—Initial Burden	Recordkeeping	0	1	200	66.67	0	66.67	66.67	0
7	Rule 18a-4(d)(2) (Subordination Agreements, Entering Into)— Initial Burden	Third-Party	0	500	20	6.67	0	6.67	3,335.00	0
8	Rule 18a-4(d)(2) (Subordination Agreements)— Ongoing Burden	Third-Party	2	100	0	0	20.00	20.00	2,000.00	4,000
9	Rule 18a-4(e)(3) (Disclosures to U.S. Counterparties, Developing Forms)—Initial Burden	Third-Party	7	30	5	1.67	0	1.67	50.10	351
10	Rule 18a-4(e)(3) (Disclosures to U.S. Counterparties, Incorporating New Language)— Initial Burden	Third-Party	7	50	10	3.33	0	3.33	166.50	1,166
11	Rule 18a-4(e)(3) (Disclosures to U.S. Counterparties)— Ongoing Burden	Third-Party	29	1	0	0	5	5	5	145
12	Rule 18a-4(f) (Exemptions, Developing Disclosure Language)— Initial Burden	Third-Party	0	1	5	1.67	0	1.67	1.67	0
13	Rule 18a-4(f) (Exemptions, Incorporating Disclosure Language)— Initial Burden	Third-Party	0	1,000	10	3.33	0	3.33	3,333.33	0

14	Rule 18a-4(f) (Exemptions)—Ongoing Burden	Third-Party	31	1	0	0	5	5	5	155
<b>TOTAL HOURLY BURDEN FOR ALL RESPONDENTS</b>										<b>7,647</b>

### 13. Costs to Respondents

#### Counterparty Notice (Rule 18a-4(d)(1))

As stated above, out of the 40 SBSs and MSBSPs, two are new firms. The staff estimates that these new firms will engage outside counsel for 10 hours to draft and review the template counterparty notice regarding segregation at a cost \$400 per hour **resulting in a one-time third party disclose cost for these two firms of \$2,667 (when annualized over 3 years).**<sup>17</sup> (IC 15)

#### Subordination Agreements (Rule 18a-4(d)(2))

As stated above, there are currently two non-broker-dealer SBSs. The Commission previously estimated that there would be three non-broker-dealer SBSs. The Commission does not expect that there will be any new non-broker-dealer SBSs in the next three years, but the Commission estimates that any new firm would hire an outside counsel at a cost of \$400 per hour to review the template subordination agreement, requiring on average a total of 20 hours. As there are no new respondents, at this time there is no industry-wide one-time burden associated with this requirement. (IC16)

Summary of Dollar Costs											
IC	Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Cost per Entity per Response	Initial Cost Annualized per Entity per Response	Ongoing Cost per Entity per Response	Annual Cost Per Entity per Response	Total Annual Cost Per Entity	Total Industry Cost	Small Business Entities Affected
15	Rule 18a-4(d)(1) (Counterparty Notice, Outside Counsel Review)—Initial Cost	Third-Party	2	1	\$4,000.00	\$1,333.33	\$0.00	\$1,333.33	\$1,333.33	\$2,667	0
16	Rule 18a-4(d)(2) (Subordination Agreements, Outside Counsel Review)—Initial Cost	Recordkeeping	0	1	\$8,000.00	\$2,666.67	\$0.00	\$2,666.67	\$2,666.67	0	0
<b>TOTAL COST FOR ALL RESPONDENTS</b>										<b>\$2,667</b>	

<sup>17</sup> 20 hours x \$400/hour / 3 years = \$2,666.67, rounded to \$2,667.



#### 14. Cost to Federal Government

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

#### 15. Changes in Burden

The changes in burden, summarized in the chart below, are due to changes in the Commission’s estimate of the number of respondents. In particular:

- A change in the number of non-broker-dealer SBSDs from 3 to 2;
- A change in the number of registered foreign SBSDs from 22 to 29;
- A change in the number of non-broker-dealer SBSDs and MSBSPs from 38 to 40;
- A change in the number of bank SBSDs from 25 to 29; and
- A change in the number of standalone nonbank SBSDs from 6 to 2.

Changes in Burden								
IC	Name of Information Collection	Type of Burden	Number of Respondents	Number of Respondents Previously Reviewed	Annual Industry Burden	Annual Industry Burden Previously Reviewed	Change in Burden	Reason for Change
1	Rule 18a-4(a) (Special Accounts)—Initial Burden	Recordkeeping	0	3	0	180	(180)	New Estimate of Number of Respondents
2	Rule 18a-4(a) (Special Accounts)—Ongoing Burden	Recordkeeping	1	1	90	90	0	n/a
3	Rule 18a-4(c) (Customer Reserve Computation)—Ongoing Burden	Recordkeeping	2	3	260	390	(130)	New Estimate of Number of Respondents
4	(Counterparty Notice)—Initial Burden	Third-Party	2	38	120	2,280	(2,160)	New Estimate of Number of Respondents
5	Rule 18a-4(d)(1) (Counterparty Notice)—Ongoing Burden	Third-Party	40	38	1,360	1292	68	New Estimate of Number of Respondents

6	Rule 18a-4(d)(2) (Subordinations Agreements, Drafting)—Initial Burden	Recordkeeping	0	3	0	200	(200)	New Estimate of Number of Respondents
7	Rule 18a-4(d)(2) (Subordination Agreements, Entering Into)—Initial Burden	Third-Party	0	3	0	10,000	(10,000)	New Estimate of Number of Respondents
8	Rule 18a-4(d)(2) (Subordination Agreements)—Ongoing Burden	Third-Party	2	3	4,000	6,000	(2,000)	New Estimate of Number of Respondents
9	Rule 18a-4(e)(3) (Disclosures to U.S. Counterparties, Developing Forms)—Initial Burden	Third-Party	7	22	351	1,100	(749)	New Estimate of Number of Respondents
10	Rule 18a-4(e)(3) (Disclosures to U.S. Counterparties, Incorporating New Language)—Initial Burden	Third-Party	7	22	1,166	3,667	(2,501)	New Estimate of Number of Respondents
11	Rule 18a-4(e)(3) (Disclosures to U.S. Counterparties)—Ongoing Burden	Third-Party	29	22	145	110	35	New Estimate of Number of Respondents
12	Rule 18a-4(f) (Exemptions, Developing Disclosure Language)—Initial Burden	Third-Party	0	31	0	52	(52)	New Estimate of Number of Respondents
13	Rule 18a-4(f) (Exemptions, Incorporating Disclosure Language)—Initial Burden	Third-Party	0	31	0	103,333	(103,333)	New Estimate of Number of Respondents

14	Rule 18a-4(f) (Exemptions)— Ongoing Burden	Third-Party	31	31	155	155	0	n/a
15	Rule 18a-4(d)(1) (Counterparty Notice, Outside Counsel Review)—Initial Cost	Third-Party	2	38	\$2,666	\$50,667	(\$48,000)	New Estimate of Number of Respondents
16	Rule 18a-4(d)(2) (Subordination Agreements, Outside Counsel Review)—Initial Cost	Recordkeeping	0	3	0	\$8,000	(\$8,000)	New Estimate of Number of Respondents

**16. Information Collected Planned for Statistical Purposes**

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

**17. Approval to omit OMB Expiration Date**

The Commission is not seeking approval to omit the expiration date.

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

This collection complies with the requirements in 5 CFR 1320.9.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not involve statistical methods.