

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for Rule 18a-9
3235-0752
Extension

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

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) into law.¹ Section 764 of the Dodd-Frank Act added section 15F to the Securities Exchange Act of 1934 (the “Exchange Act”), which provides that the Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers (“SBSDs”) and major security-based swap participants (“MSBSPs”).²

Accordingly, on September 19, 2019, the Commission adopted amendments to its recordkeeping and reporting rules for broker-dealers as well as new recordkeeping and reporting rules for SBSDs and MSBSPs (the “SBS Recordkeeping Release”).³ The new rules included Exchange Act Rule 18a-9, which is modeled on Exchange Act Rule 17a-13 and establishes a securities count program for SBSDs not dually registered as a broker-dealer or regulated by a prudential regulator (“stand-alone SBSDs”). Rule 18a-9 requires stand-alone SBSDs to examine and count the securities they physically hold, account for the securities that are subject to their control and direction but are not in their physical possession, verify the locations of securities under certain circumstances, and compare the results of the count and verification with their records.⁴ Stand-alone SBSDs are required to perform a securities count each quarter, either as of a date certain or on a cyclical basis. Rule 18a-9 does not apply to SBSDs or MSBSPs regulated by a prudential regulator, or MSBSPs not dually registered as a broker-dealer or regulated by a prudential regulator. Rule 18a-9 requires stand-alone SBSDs to note any discrepancies between the count and the firm’s records, and to record in the firm’s record any discrepancies that remain unresolved seven business days after the date of the examination, count, and verification.⁵

2. Purpose and Use of the Information Collection

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

² See 15 U.S.C. 78o-10.

³ See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Final Rule*, Exchange Act Release No. 87005 (Sep. 19, 2019), 84 FR 68550 (Dec. 16, 2019).

⁴ See Rule 18a-9.

⁵ See Rule 18a-9.

The information is used as an inventory control device to monitor a stand-alone SBSB's ability to account for all securities held in transfer, in transit, pledged, loaned, borrowed, deposited, or otherwise subject to the firm's control or direction. Any discrepancies between the security count and the SBSB's records alert the Commission to those firms experiencing back-office operational issues. Without Rule 18a-9, the Commission would lose this important warning device to inform it when a stand-alone SBSB might be having problems accounting for the securities for which it is responsible.

3. Consideration Given to Information Technology

Since Rule 18a-9 provides that firms must reconcile their books and records with their physical inventory and inventory in transit, improved information technology is not expected to reduce the burden.

4. Duplication

No duplication is apparent because stand-alone SBSBs do not have SROs that require similar counts of securities.

5. Effect on Small Entities

Based on feedback from industry participants about the security-based swap market, entities that qualify as SBSBs or MSBSPs will likely exceed the thresholds defining "small entities."⁶ Thus, it is unlikely that the requirements under Rule 18a-9 will have a significant economic impact on a small entity.

6. Consequences of Not Conducting Collection

If security counts were conducted less frequently, investors would not have the protection that the federal securities laws require. With regard to broker-dealers, between 1967 and 1970, a number of broker-dealers became insolvent because of their inability to account for the securities that their records showed they possessed or controlled. The Commission believes that the risk of insolvency due to inability to account for securities is similarly applicable to stand-alone SBSBs.

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

⁶ Section 601(b) of the Regulatory Flexibility Act ("RFA") defines the term "*small entity*," The statute, however, permits agencies to formulate their own definitions. The Commission has adopted definitions for the term "small entity" for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in 17 CFR 240.0-10. *See Statement of Management on Internal Accounting Control*, Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982).

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

9. Payment or Gift

No payments or gifts are provided to respondents.

10. Confidentiality

Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

11. Sensitive Questions

The information collection does not collect personally identifiable information about individuals, therefore, a PIA, SORN, and PAS are not required.

12. Burden of Information Collection

Rule 18a–9, which is modeled on Rule 17a–13, requires stand-alone SBSs to establish a securities count program.⁷ The records required by Rule 18a-9 should already be recorded by the systems implemented under Exchange Act Rules 18a-5 and 18a-6 and accordingly, the resulting initial burden is largely already accounted for under these rules.

The Commission estimates that Rule 18a–9 imposes a burden of 25 hours per securities count, resulting in an ongoing annual burden of 100 hours per stand-alone SBS,⁸ based on the current approved Paperwork Reduction Act estimate for Rule 17a–13 which estimates a securities count program imposes an average ongoing cost of 100 hours per year on a broker-dealer.⁹

The Commission estimates that there are 11 stand-alone SBSs, resulting in an ongoing burden of 1,100 hours per year.¹⁰ **Over a three year period, the total industry burden is**

⁷ See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Final Rule*, Exchange Act Release No. 87005 (Sep. 19, 2019), 84 FR 68550 (Dec. 16, 2019).

⁸ 4 securities counts/year * 25 hours/securities count = 100 hours/year.

⁹ See Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–13* (Aug. 15, 2022), available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=124072601>.

¹⁰ 11 stand-alone SBSs x 100 hours = 1,100 hours per year.

expected to be 3,300 hours,¹¹ or approximately 1,100 hours per year when annualized.¹²
 These burdens are recordkeeping burdens.

Summary of Hourly Burdens										
		A.	B.	C.	D.	E.	F.	G.		
Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Initial Burden Annualized per Entity per Response	Ongoing Burden per Entity per Response	Annual Burden Per Entity per Response	Total Annual Burden Per Entity	Total Industry Burden	Small Business Entities Affected
					[C + 3 years]		[D + E]	[F * B]	[G * A]	[A * 0%]
Securities Count Program	Recordkeeping	11	4	0.00	0.00	25.00	25.00	100	1,100	0.00
TOTAL HOURLY BURDEN FOR ALL RESPONDENTS									1,100	

13. Costs to Respondents

Rule 18a-9 does not impose capital and start-up costs or operation, maintenance, and purchase of services costs.

14. Costs to Federal Government

Rule 18a-9 does not result in costs to the federal government due to contracting, information technology, development, hiring one or more new employees, or reallocating existing employees.

15. Changes in Burden

The estimated burdens have increased as a result of the burden estimate being revised to reflect an increase in the number of respondents.

The table below summarizes the change in the estimated burden.

Summary of Changes in Burden Hours				
Name of Information Collection Previously Reviewed	Annual Industry Burden	Annual Industry Burden Previously Reviewed	Change in Burden	Reason for Change in Burden
Securities Account Program	1,100	650	450	Increased estimate for the number of respondents

¹¹ 1,100 hours in first year + 1,100 hours in second year + 1,100 hours in third year = 3,300 hours.

¹² 3,300 hours / 3 years = 1,100 hours per year.

16. Information Collection Planned for Statistical Purposes

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

17. OMB Expiration Date Display Approval

The Commission is not seeking approval to not display the OMB approval expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.