

**SUPPORTING STATEMENT FOR THE PAPERWORK REDUCTION ACT
INFORMATION COLLECTION SUBMISSION FOR RULE 194: APPLICATIONS BY
SECURITY-BASED SWAP DEALERS OR MAJOR SECURITY-BASED SWAP
PARTICIPANTS FOR STATUTORILY DISQUALIFIED ASSOCIATED PERSONS TO
EFFECT OR BE INVOLVED IN EFFECTING SECURITY-BASED SWAPS
[OMB Control No. 3235-0733]**

A. JUSTIFICATION

1. Necessity of Information Collection

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq. 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 Entity”). Exchange Act Section 15F(b)(6), as added by Section 764(a) of the Dodd-Frank Act, makes it unlawful for an SBS Entity to permit an associated person who is subject to a statutory disqualification 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, “[e]xcept to the extent otherwise specifically provided by rule, regulation, or order of the Commission.”¹

On August 5, 2015, the Commission proposed, and on December 19, 2018, adopted Rule of Practice 194 (17 CFR 201.194) which provides a process for an SBS Entity to make an application to the Commission for an order permitting an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity.² The rule specifies the process for obtaining relief from the statutory prohibition in Exchange Act Section 15F(b)(6), including by setting forth the required showing, the form of application and the items to be addressed with respect to associated persons that are natural persons.

In particular, Rule of Practice 194 provides as follows:

¹ Exchange Act Section 15F(b)(6) provides: “Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise or reasonable care should have known, of the statutory disqualification.” 15 U.S.C. 78o-10(b)(6).

² See *Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons to Effect or be Involved in Effecting Security-Based Swaps*, Exchange Act Release No. 75612 (Aug. 5, 2013), 80 Fed. Reg. 51683 (Aug. 25, 2015). See also *Applications by Securities-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons To Effect or Be Involved in Effecting Security-Based Swaps*, Exchange Act Release No. 84858 (Dec. 19, 2018), 84 Fed. Reg. 4906 (Feb. 19, 2019) (“Rule of Practice 194 Adopting Release”). OMB No. 3235-0733 was assigned to proposed collection of information.

- Paragraph (a) of the rule defines the scope of the rule. The rule allows an SBS Entity to voluntarily submit an application to the Commission to request an order where an associated person of an SBS Entity is subject to a statutory disqualification and thereby prohibited from effecting or being involved in effecting security based swaps on behalf of the SBS Entity under Exchange Act Section 15F(b)(6).³
- Paragraph (b) sets forth the required showing for an application. For the Commission to issue an order granting relief under Rule of Practice 194, the Commission would need to find that it would be consistent with the public interest to permit the associated person of the SBS Entity who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity.
- Paragraph (c) provides two exclusions from the statutory prohibition in Exchange Act Section 15F(b)(6) with respect to (1) associated persons that are not natural persons and that are subject to a statutory disqualification, and (2) associated persons who are natural persons but who are not U.S. persons meeting certain specified additional criteria.
- Paragraph (d) specifies the form of the application for natural persons subject to a statutory disqualification. Paragraph (d) requires that each application with respect to an associated person subject to a statutory disqualification shall be supported by a written statement, signed by a knowledgeable person authorized by the SBS Entity.
- Paragraph (e) sets forth the items to be addressed for applications with respect to natural persons subject to a statutory disqualification. Each of the items in paragraph (e) is addressed in the written statement required by paragraph (d).
- Paragraph (f) requires an applicant to provide as part of the application any order, notice or other applicable document reflecting the grant, denial or other disposition (including any dispositions on appeal) of any prior application concerning the associated person under the rule and other similar processes.
- Paragraph (g) governs the procedure where there is an adverse recommendation proposed by the staff with respect to an application. Paragraph (g) provides that where there is such an adverse recommendation, the applicant shall be so advised and provided with a written statement by the staff of the reasons for such recommendation.
- Paragraph (h) limits the applicability of the prohibition in Exchange Act Section 15F(b)(6) by prescribing the conditions under which an SBS Entity may permit a person associated with it that is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf without being required to file an application under Rule of Practice 194. Generally, paragraph (h) permits associated persons that are subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of SBS Entities where the Commission or other regulatory authority previously reviewed the matter and permitted the person subject to a statutory

³ 15 U.S.C. 78o-10(b)(6).

disqualification to be a member, associated with a member, registered or listed as a principal of a regulated entity notwithstanding statutory disqualification.

Application

To make an application under Rule of Practice 194, the SBS Entity filing an application with respect to an associated person must provide to the Commission:

- Exhibits required by paragraph (d) to Rule of Practice 194, including a copy of the order or other applicable document that resulted in the associated person being subject to a statutory disqualification; an undertaking by the applicant to notify promptly the Commission in writing if any information submitted in support of the application becomes materially false or misleading while the application is pending; a copy of the questionnaire or application for employment specified in Rule 15Fb6-2(b), with respect to the associated person; in cases where the associated person has been subject of any proceedings resulting in the imposition of disciplinary sanctions during the five years preceding the filing of the application or is the subject of a pending proceeding by the Commission, Commodity Futures Trading Commission (“CFTC”), any federal or state regulatory or law enforcement agency, registered futures association, foreign financial regulatory authority, registered national securities association, or any other self-regulatory organization (“SRO”),⁴ or commodities exchange or any court, a copy of the related order, decision, or document issued by the court, agency or SRO.
- A written statement that includes the information specified in paragraph (e) to Rule of Practice 194, including, but not limited to: the associated person’s compliance with any order resulting in statutory disqualification; the capacity or position in which the person subject to a statutory disqualification proposes to be associated with the SBS Entity; the terms and conditions of employment and supervision to be exercised over such associated person and, where applicable, by such associated person; the compliance and disciplinary history, during the five years preceding the filing of the application, of the SBS Entity; information concerning prior applications or processes.

Under paragraph (g) to Rule of Practice 194, an applicant could submit a written statement in response to any adverse recommendation proposed by Commission staff with respect to an application under proposed Rule of Practice 194.

The information sought in connection with Rule of Practice 194 assists the Commission in determining whether allowing associated persons to effect or be involved in effecting security-based swaps on behalf of a SBS Entity, notwithstanding statutory disqualification, is consistent with the public interest.

⁴ “Self-regulatory organization” is defined in Section 3(a)(26) of the Exchange Act (15 U.S.C. 78c(a)(26)) as “any national securities exchange, registered securities association, or registered clearing agency, or (solely for the purposes of sections 19(b), 19(c) and 23(b) of [the Exchange Act]) the Municipal Securities Rulemaking Board established by section 15B of [the Exchange Act].”

Notice

An SBS Entity is not required to file an application under Rule of Practice 194 with respect to certain associated persons that are subject to a statutory disqualification, as provided for in paragraph (h) of Rule of Practice 194. To meet those requirements, however, the SBS Entity is required to file a notice with the Commission.

For associated persons that are natural persons, the notice in paragraph (h) sets forth: (1) the name of the SBS Entity; (2) the name of the associated person subject to a statutory disqualification; (3) the name of the associated person's prospective supervisor(s) at the SBS Entity; (4) the place of employment for the associated person subject to a statutory disqualification; and (5) identification of any SRO or agency that has indicated its agreement with the terms and conditions of the proposed association, registration or listing as a principal.

Information collected in connection with the notice provided by Rule of Practice 194(h) assists the Commission for examination purposes by identifying associated persons that are subject to a statutory disqualification (and other basic information).

2. Purpose and Use of the Information Collection

Application

Information collected in connection with an application under Rule of Practice 194 assists the Commission in determining whether an associated person of an SBS Entity should be permitted to effect or be involved in effecting security-based swaps on behalf of the SBS Entity, notwithstanding that the associated person is subject to a statutory disqualification. Although, absent the rule, an SBS Entity could nonetheless submit an application for an exemptive order directly under Exchange Act Section 15F(b)(6),⁵ Rule of Practice 194 specifies the information the Commission needs to evaluate such an application, and under what standard the Commission will consider whether to grant such relief.

Notice

Information collected in connection with the notice provided by Rule of Practice 194(h)(2)(iii) assists the Commission for examination purposes by identifying associated persons that are subject to a statutory disqualification (and other basic information).

3. Consideration Given to Information Technology

Rule of Practice 194 utilizes established procedures under the Commission's current Rules of Practice,⁶ including Rule of Practice 150.⁷ Rule of Practice 150 allows filings with the Commission to be made by facsimile if a contemporaneous transmission of a non-facsimile

⁵ 15 U.S.C. 78o-10(b)(6).

⁶ 17 CFR 201.100 *et seq.*

⁷ 17 CFR 201.150.

original with manual signature is made.

4. Duplication

Rule of Practice 194 establishes a voluntary process for an SBS Entity to seek relief in the event that an associated person of the SBS Entity becomes subject to the statutory prohibition in Exchange Act Section 15F(b)(6).

In proposing Rule of Practice 194, the Commission sought, where appropriate, to minimize the burdens and costs associated with Rule of Practice 194 and to avoid duplication. For example, the Commission would not require an application under Rule of Practice 194 with respect to certain associated persons subject to a statutory disqualification previously granted relief (*i.e.*, by Commission, CFTC, SRO, or NFA). Rather, in such instances, SBS Entities would only be required to provide a brief notice to the Commission under Rule of Practice 194(h).

5. Effect on Small Entities

Based on feedback from market participants and the Commission's existing information about the security-based swap market, and consistent with the Commission's position in prior rulemakings arising out of the Dodd-Frank Act, the Commission continues to believe that no SBS Entities are "small entities" under the definition used for the purposes of the Regulatory Flexibility Act and specified in 17 CFR 240.0-10.⁸

6. Consequences of Not Conducting Collection

Absent Rule of Practice 194, SBS Entities seeking to apply for relief from Exchange Act Section 15F(b)(6) could apply to the Commission directly, outside of a formal process, possibly looking to either Rule of Practice 193⁹ or an analogous process as a guide. However, the Commission believes that such applications, due to the lack of clarity, would be more time-consuming, and would be more prone to errors or more likely to be deemed to contain insufficient information to allow the Commission to make a determination.

Under Rule of Practice 194, SBS Entities should generally be aware of the information they are required to provide, as well as the standard of review. The Commission also believes that clarity about the items that the Commission will consider in making a determination, while not altering the set of possible outcomes, will allow SBS Entities to make informed assessments as to the likelihood that the Commission will either grant or deny relief. Thus, Rule of Practice 194 may conserve resources and may allow SBS Entities to make more-informed evaluations about the tradeoff between pursuing an application and reassigning a person subject to a statutory disqualification.

Finally, paragraph (h) of Rule of Practice 194 provides relief in cases where the Commission, the CFTC, an SRO, or a registered futures association has granted a prior

⁸ See 17 CFR 240.0-10.

⁹ 17 CFR 201.193.

application or otherwise granted relief from a statutory disqualification with respect to that associated person. To the extent that SBS Entities and other regulated entities use the same personnel or entities to effect security-based swaps, swaps, and securities transactions, this proposed rule may conserve resources in the sense that SBS Entities do not have to undergo duplicate review when decisions about relief from statutory disqualifications have already been made by the Commission or another regulatory authority.

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

Much of the information collected pursuant to Rule of Practice 194 is kept confidential, subject to the provisions of Rule of Practice 194 and applicable law.¹⁰

11. Sensitive Questions

The SBS Entity's application and/or supporting documents are submitted to a dedicated inbox for processing by the Commission. The information collection collects elements of PII stored in SEC's internal storage which is covered by the M365 PIA.¹¹ 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.

¹⁰ The Commission keeps applications and application supporting materials submitted pursuant to Rule of Practice 194 confidential, subject to the existing statutory and regulatory framework with respect to the public availability of such materials, including the Freedom of Information Act ("FOIA"), the Exchange Act, and applicable Commission rules. However, notices filed with the Commission pursuant to Rule of Practice 194 are made public. *See* Rule of Practice 194 Adopting Release, 84 FR at 4919 and 4922. *See also* SEC, Applications and Notices by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons to Effect or Be Involved in Effecting Security-Based Swap Transactions (Rule of Practice 194) ("Rule 194 Approval Orders and Notices Database"), available at <https://www.sec.gov/rule-practice-194-applications-and-notice>.

¹¹ <https://www.sec.gov/files/pia-m365.pdf>.

12. Information Collection Burden

a. Respondents

There are currently 55 SBS Entities registered with the Commission.¹²

Based on our experience with Rule 194, the Commission estimates that, on an average annual basis, of the 55 SBS Entities, the Commission would receive up to one application in accordance with Rule of Practice 194 with respect to associated person that are natural persons, and up to three notices pursuant to proposed Rule of Practice 194(h) with respect to associated persons that are natural persons.¹³

b. Description of Burdens

i. *Burden Associated with Filing Applications under Rule of Practice 194*

The total annual ongoing reporting burden for all SBS Entity respondents associated with filing applications under Rule of Practice 194 would be approximately 30 hours on an annual basis, as explained more fully below. It is likely that the time necessary to complete an application under Rule of Practice 194 will vary depending on the number of exhibits required to be submitted in accordance with Rule of Practice 194(d), and the amount of information that will need to be discussed in the written statement, as specified in Rule of Practice 194(e) and (f).

Based on the Commission staff's estimates and experience,¹⁴ the Commission estimates that the average time necessary for an SBS Entity to research the questions, and complete and file an application under Rule of Practice 194 with respect to associated persons that are natural

¹² See SEC, List of Security-Based Swap Dealers and Major Security-Based Swap Participants, available at <https://www.sec.gov/files/tm-sbsd-msbsp-pax-list-2412.pdf>.

¹³ While we initially estimated that we might receive as many as five applications and five notices from SBS Entity respondents in a given year, our experience since making this estimate has led us to revise down this expectation. Since the first registration of an SBS Entity with the Commission on October 27, 2021, the Commission has only received three notices and one application under Rule of Practice 194. See Rule 194 Approval Orders and Notices Database. Based on this and related discussions with registered SBS Entities, we do not expect the number of applications and notices to exceed these figures on an annual basis.

¹⁴ For example, based on the experience relative to Form BD, the Commission has estimated the average time necessary for an SBS Entity to research the questions and complete and file a Form SBSE for an entity, including the accompanying schedules and disclosure reporting pages—which solicit information regarding statutory disqualification—to be approximately one work week, or 40 hours. However, the Commission initially estimated that it would take an SBS Entity three-quarters of the time to make a similar application on behalf of a natural person, or in this case, 30 hours per natural person. See Proposing Release, 80 FR 51707. Nothing in our experience working with the only SBS Entity respondent to submit an application under Rule of Practice 194 to date leads us to believe this estimate requires revision. The Commission also estimates that the internal cost burden associated with filing an application will be approximately \$15,660 per application (\$522 per hour x 30 hours = \$15,660). The hourly rate included for the estimated internal cost burden is based upon data used to form initial estimates at the adoption of Rule of Practice 194, with adjustments made to account for subsequent inflation. See Rule of Practice 194 Adopting Release at 4934 note 284.

persons is approximately 30 hours.

Given that the Commission estimates that, on an average annual basis, there will be up to one application¹⁵ under Rule of Practice 194 with respect to associated persons that are natural persons, the Commission estimates the total burden associated with filing such applications on average to be approximately 30 hours on an annual basis.¹⁶

In summary, the Commission estimates that, the ongoing reporting burden for all SBS Entity respondents associated with Rule of Practice 194 to file applications with respect to associated persons that are natural persons would be approximately 30 hours per year. The ongoing burden per SBS Entity respondent would be approximately 30 hours per year.

ii. Burden Associated with Filing Notices under Rule of Practice 194(h)

The total annual ongoing reporting burden for all SBS Entity respondents associated with filing notices under Rule of Practice 194 would be approximately 18 hours on an annual basis, as explained more fully below. The Commission has estimated that up to three notices will be submitted by SBS Entities¹⁷ pursuant to Rule of Practice 194(h) for one natural person each on an average annual basis. The Commission believes that the average time necessary for an SBS Entity to research the questions, complete and file the brief notice under Rule of Practice 194(h) will be less than for a full application under Rule of Practice 194 and the Commission estimates that it will take approximately 6 hours per notice, or 18 hours total on an average annual basis for all SBS Entities providing the notices for up to three natural persons.¹⁸

In summary, the Commission estimates that, the ongoing reporting burden for all SBS Entities associated with filing notices under Rule of Practice 194(h) would be approximately 18 hours per year. The average estimated burden per SBS Entity respondent would be approximately 6 hours per year.

¹⁵ The Commission estimates that, out of the 55 registered SBS Entities that would submit an application in accordance with Rule of Practice 194, a total of up to one application is likely to be submitted in a given year. While it is possible that some SBS Entities would submit more than one application in a given year, the total number of applications submitted by all 55 SBS Entities is not expected to exceed one application in a given year. For purposes of the burden estimate, we are treating each application as being submitted by a separate SBS Entity respondent.

¹⁶ This estimate is based on the following: (30 hours) x (1 SBS Entity applying with respect to associated persons that are natural persons) = 30 hours per year.

¹⁷ The Commission estimates that, out of the 55 registered SBS Entities, a total of up to three notices are likely to be submitted in a given year. While it is possible that some SBS Entities would submit more than one notice in a given year, the total number of notices submitted by all 55 SBS Entities is not expected to exceed three notices in a given year. For purposes of the burden estimate, we are treating each notice as being submitted by a separate SBS Entity respondent. The Commission also estimates that the internal cost burden associated with filing a notice will be approximately \$3,132 per notice (\$522 per hour x 6 hours = \$3,132). The hourly rate included for the estimated internal cost burden is based upon data used to form initial estimates at the adoption of Rule of Practice 194, with adjustments made to account for subsequent inflation. See Rule of Practice 194 Adopting Release at 4934 note 284.

¹⁸ This estimate is based on the following: (6 hours) x (3 SBS Entities filing notices under proposed Rule of Practice 194(h)) = 18 hours per year.

Given that the Commission estimates that, on an average annual basis, there will be up to one application filed under Rule of Practice 194 and up to three notices filed under Rule of Practice 194(h), the Commission estimates the total burden associated with filing such applications and notices on average to be approximately 48 hours on an annual basis.¹⁹

Summary of Hour Burdens

Rule of Practice 194									
	<u>Nature of Information Collection Burden</u>	<u>Type of Burden</u>	<u>Number of Respondents</u>	<u>Number of Annual Responses Per Respondent</u>	<u>Initial Burden Per Response Per Respondent</u>	<u>Ongoing Burden Per Response Per Year Per Respondent</u>	<u>Total Annual Burden Per Respondent</u>	<u>Total Annual Industry Burden</u>	<u>Small Business Entities Affected</u>
	Burden Associated with Filing Applications	Reporting	1	1	0	30	30	30	0
	Burden Associated with Filing Notices	Reporting	3	1	0	6	6	18	0
								48	

13. Costs to Respondents

The SEC is in the process of revising its methodologies to estimate annualized costs to the Federal government for all its relevant collections of information. The SEC anticipates that future extensions of this collection of information will reflect the revised methodologies.

14. Costs to Federal Government

The SEC is in the process of revising its methodologies to estimate annualized costs to the Federal government for all its relevant collections of information. The SEC anticipates that future extensions of this collection of information will reflect the revised methodologies.

15. Changes in Burden

The estimated burden associated with filing applications decreased from 150 hours to 30 hours (for a decrease of 120 hours) because the estimated number of respondents decreased from 5 to 1. The estimated burden associated with filing notices decreased from 30 hours to 18 because the estimated number of respondents decreased from 5 to 3.

¹⁹ This estimate is based on the following: (30 hours) x (up to 1 SBS Entities applying with respect to associated persons that are natural persons) + (6 hours) x (3 SBS Entities filing notices under Rule of Practice 194(h)) = 48 hours per year.

16. Information Collection Planned for Statistical Purposes

Not applicable.

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. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.