

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission
for Amendments to Rule 13n-4 in Connection with
Access to Data Obtained by Security-Based Swap Data Repositories

OMB Control No. 3235-0738

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

Title VII of the Dodd-Frank Act provides for a comprehensive regulatory framework for security-based swaps (“SBS”), including the regulation of security-based swap data repositories (“SBSDRs”).¹ These statutory requirements for SBSDRs include that SBSDRs make SBS data obtained by an SBSDR (“SBS Data”) conditionally available to specified U.S. government entities and any other person that the Commission determines to be appropriate.²

On August 29, 2016, the Commission adopted Exchange Act Rules 13n-4(b)(9), (b)(10) and (d) to implement SBS Data access rules.³ Under those rules, SBSDRs are required to provide SBS Data to certain entities, upon request and subject to conditions, including that there be in effect an arrangement between the Commission and the relevant entity to address the confidentiality of the SBS Data.⁴ The rules further require SBSDRs to create and maintain records regarding such data access.

¹ Pub. L. No. 111-203, § 761(a) (adding to the Securities Exchange Act of 1934 (“Exchange Act”) Section 3(a)(75) (defining “security-based swap data repository”)) and § 763(i) (adding Exchange Act Section 13(n) (establishing a regulatory regime for SBSDRs)).

² See Exchange Act sections 13(n)(5)(G), (H). This summary describes the collection of information associated with the data access provisions adopted by the Dodd-Frank Act, as modified by section 86001(b) of Public Law 114-94, enacted in 2015.

³ See Access to Data Obtained by Security-Based Swap Data Repositories, Exchange Act Release No. 78716 (Aug. 29, 2016), 81 FR 60585 (Sept. 2, 2016).

⁴ 17 CFR 240.13n-4(b)(10). Rule 13n-4(b)(10) implements Exchange Act Section 13(n)(5)(H), which provides that, before an SBSDR may share information with a specified entity, the SBSDR shall receive a written agreement from the entity stating that the entity shall abide by the confidentiality requirements described in Exchange Act Section 24 (7 U.S.C. 78x) relating to the information on SBS transactions that is provided. Exchange Act Section 24 generally addresses disclosures of information by the Commission and its personnel. Under Rule 13n-4(b)(10), the statutory requirement for an agreement between the SBSDR and the relevant entity is deemed satisfied by a confidentiality arrangement between the Commission and the entity in accordance with the rule.

Also, in connection with the Commission’s statutory and regulatory authority to determine other persons to be appropriate to access SBS Data pursuant to these provisions,⁵ regulators or other authorities not specifically designated by statute or rule may request from the Commission that they be deemed eligible to access SBS Data.

2. Information Collection Purpose and Use

By allowing specified U.S. and, if authorized, non-U.S. regulators and other authorities to access SBS Data, implementation of the statutory and regulatory SBS Data access provisions – including the confidentiality condition and the Commission’s authority to designate entities to access SBS Data – facilitates regulatory oversight of the SBS market and its participants, including oversight of systemic and other risks associated with the market. Implementation of those provisions also promotes compliance with applicable laws and regulations, including but not limited to compliance with the antifraud provisions of the federal securities laws.

3. Consideration Given to Information Technology

The SBS Data access rules are drafted in a flexible manner that does not mandate the method by which SBS Data is provided, and hence facilitates the ability of regulators and other authorities to access such information. In particular, the rules related to the statutory requirement that the Commission be notified of SBS Data requests provide that an SBSDR can satisfy that requirement by informing the Commission of the first instance of a request, and maintaining records of other requests. This approach is designed to account for the way the Commission expects entities to access SBS Data.

4. Duplication

Section 712(a)(2) of the Dodd-Frank Act provides that, before commencing any rulemaking regarding, among other things, SBS or SBSDRs, the Commission must consult and coordinate with the Commodity Futures Trading Commission (“CFTC”) and prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible. Any person that is required to be registered as an SBSDR under Exchange Act Section 13(n) must register with the Commission (absent an exemption), regardless of whether that person is also registered with the CFTC under the Commodity Exchange Act as a swap data repository (“SDR”). The Commission believes that a person that registers with the Commission as an SBSDR is likely to also register with the CFTC as an SDR. Prior to the Commission’s 2016 adoption of the rules at issue, and as mandated by Section 712 of the Dodd-Frank Act, Commission staff and CFTC staff consulted and coordinated with one another regarding their respective rules regarding SBSDRs and SDRs. Commission staff also consulted and coordinated with other prudential regulators.

5. Effect on Small Entities

⁵ See Exchange Act section 13(n)(5)(G)(v) and Rule 240.13n-4(b)(9)(x).

The rules will not have a significant economic impact on a substantial number of small entities.

6. Consequences of Not Conducting Collection

The rules are intended to permit U.S. and, if authorized, non-U.S. regulators and other authorities to access SBS Data in connection with overseeing the SBS market and its participants, monitoring and controlling of risks including systemic risks, and promoting compliance with applicable requirements. A failure to collect this information would impinge upon the ability of regulators and other authorities to see current information regarding the SBS market and its participants, and hence would conflict with all of those goals.

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

Because Rule 13n-4(b)(9), consistent with the Exchange Act, requires SBSDRs to make SBS information available “upon request” of an authorized regulator or other authority, it is to be expected that SBSDRs will make available such information more often than quarterly. This collection of information is necessary, however, to ensure that regulators and other authorities have timely access to information in connection with the oversight of the SBS market and its participants.

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

SBS Data provided by an SBSDR to an authorized regulator or other authority pursuant to the SBS Data access rules will be subject to the confidentiality protections specified in a confidentiality arrangement between the Commission and the recipient entity.

The Commission will make public requests for a determination that an authority is appropriate to conditionally access SBS Data, as well as Commission determinations issued in response to such requests. The Commission expects that it will make publicly available, on the Commission’s website, the confidentiality arrangements with the Commission used to satisfy the confidentiality condition.

Initial notices from SBSDRs to the Commission regarding requests by authorized entities for access to SBSDRs Data will be kept confidential, subject to the provisions of applicable law. To the extent that the Commission obtains subsequent requests for access that would be required to be maintained by an SBSDR, such as in connection with an examination or investigation, the

Commission also will keep those records confidential, subject to the provisions of applicable law.

11. Sensitive Questions

The Commission will not collect or maintain any personally identifiable information under the rule. The agency has determined that neither a PIA nor a SORN are required in connection with the collection of information.

12. Information Collection Burden

The total reporting for the rules for all respondents is 11,405 hours annually. This burden is broken down by collection of information below.

a. MOUs and other arrangements

Rule 13n-4(b)(10) provides that before an SBSDR shares SBS Data with an authorized entity, there must be an arrangement between the Commission and the entity to address the confidentiality of the information provided. An entity seeking a Commission determination that it is eligible to access SBS Data (pursuant to Rule 13n-4(b)(9)(x)) may also enter into an MOU or other arrangement in connection with the Commission's determination of the entity's eligibility. Commission staff estimates a total of 50 respondents for those provisions. Commission staff estimates that on average, recipients of SBS Data will expend 500 hours in connection with negotiating these confidentiality arrangements, MOUs or other arrangements, for a one-time burden of 25,000 hours. This equates to 8,333.33 hours per year when annualized over three years, or 166.67 hours per respondent when annualized over three years. Commission staff estimates no ongoing burdens associated with this requirement. This collection is a reporting type of collection.

b. Requests for Access

Rule 13n-4(b)(9)(x) provides that the Commission may determine that certain entities that are not identified by statute and/or Commission rules may request that they may access to SBS Data.⁶ Commission staff estimates a total of 41 respondents (that otherwise are not identified by statute or Commission rules as being eligible for access) will request such determination. Commission staff estimates that on average such entities will expend 40 hours in connection with such requests, for a one-time burden of 1,640 hours. This equates to 546.67 hours per year where annualized over three years, or 13.33 hours per respondent when annualized over three years. Commission staff estimates no ongoing burdens associated with this requirement. This collection is a reporting type of collection.

⁶ To date, the Commission has issued one order under Rule 13n-4(b)(9)(x) granting access to SBSDR Data. *See Order Determining That the Financial Industry Regulatory Authority Conditionally May Access Certain Security-Based Swap Data Obtained by Security-Based Swap Data Repositories*, Release No. 34-95470 (Aug. 11, 2022), 87 FR 50655 (Aug. 17, 2022).

c. Systems Costs

SBSDRs may be expected to incur systems-related costs associated with setting up access to SBS Data for regulators and other authorities. Commission staff estimates a total of three respondent SBSDRs will incur such costs. Commission staff estimates that on average such entities will expend 1,300 hours in connection with providing such connectivity (based on each SBSDR incurring 26 hours per recipient, for 50 total recipients), for a one-time burden of 3,900 hours. This equates to 1,300 hours per year where annualized over three years, or 433.33 hours per respondent when annualized over three years. Commission staff estimates no ongoing burdens associated with this requirement. This collection is a recordkeeping type of collection.

d. Providing Notification of Requests

Rule 13n-4(d) provides that an SBSDR must inform the Commission when it receives the first request for SBS Data from a particular entity. Commission staff estimates a total of three respondents will incur such costs. Commission staff estimates that SBSDRs will expend 25 hours in connection with this notice requirement (based on each SBSDR providing 50 notices, at half-hour per notice), for a one-time burden of 75 hours. This equates to 25 hours per year where annualized over three years, or 8.33 hours per respondent when annualized over three years. Commission staff estimates no ongoing burdens associated with this requirement. This collection is a reporting type of collection.

e. Records of requests

Rule 13n-4(d) further provides that an SBSDR must maintain records of all information related to an initial and subsequent requests for data access from a particular entity.⁷ Commission staff estimates a total of three respondents for these provisions. Commission staff estimates that compliance with this provision will require 360 hours initially and 280 hours annually per respondent, for a total burden of 1,080 hours initially and 840 hours annually across three respondents. This equates to 1,200 hours per year when annualized over three years or 400 hours per respondent when annualized over three years. This collection is a recordkeeping type of collection.

f. Summary of Hourly Burdens

The table below summarizes the estimates of the total hourly burden.

Collection of Information	Type of Burden	Total Number of Respondents	Total Number of Responses Per Year	Initial Burden Per Response Per Year Per Respondent	Ongoing Burden Per Response Per Year Per Respondent	Total Annualized Burden Per Year Per Respondent	Total Reporting Burden For All Respondents
Regulator MOUs/ arrangements related to confidentiality	Reporting	50	1	166.67	0.00	166.67	8,333
Requests for Commission determination	Reporting	41	1	13.33	0.00	13.33	547

⁷ 17 CFR 13n-4(d).

Collection of Information	Type of Burden	Total Number of Respondents	Total Number of Responses Per Year	Initial Burden Per Response Per Year Per Respondent	Ongoing Burden Per Response Per Year Per Respondent	Total Annualized Burden Per Year Per Respondent	Total Reporting Burden For All Respondents
Systems costs incurred by SBSDRs	Recordkeeping	3	1	433.33	0.00	433.33	1,300
Data request notification costs incurred by SBSDRs	Reporting	3	50	0.17	0.00	8.33	25
Records of requests maintained by SBSDRs	Recordkeeping	3	1	120	280	400	1,200
Totals							11,405

13. Costs to Respondents

The total cost for all of the Rules and Form SDR for all respondents is approximately \$120,000 annually.

These costs arise in connection with rule 13n-4(d), which provides that SBSDRs must maintain records of all information related to initial and subsequent requests for data access. Commission staff estimates a total of three respondents for these provisions. Commission staff estimates that compliance with this provision will require \$40,000 annually per respondent, for a total cost of \$120,000 annually across three respondents. This collection is a recordkeeping type of collection.

The table below summarizes the estimates of the total cost burden.

Collection of Information	Type of Burden	Total Number of Respondents	Total Number of Responses Per Year	Initial Cost Per Response Per Year Per Respondent	Ongoing Cost Per Response Per Year Per Respondent	Total Annualized Cost Per Year Per Respondent	Total Reporting Cost For All Respondents
Records of requests maintained by SBSDRs	Recordkeeping	3	1	0	\$40,000	\$40,000	\$120,000

14. Costs to Federal Government

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

15. Changes in Burden

Not applicable.

16. Information Collection Planned for Statistical Purpose

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. Collection of Information Employing Statistical Methods.

This collection does not involve statistical methods.