

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-792; OMB Control No. 3235-0732]

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

#### Extension:

Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for approval of extension of the previously approved collection of information provided for in Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants.<sup>1</sup> (17 CFR 240.3a67-10, 240.3a71-3, 240.3a71-6, 240.15Fh-1 through 15Fh-6 and 240.15Fk-1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

In 2010, Congress passed the Dodd-Frank Act, establishing a comprehensive framework for regulating the over-the-counter swaps markets. As required by Title VII of the Dodd-Frank Act, new section 15F(h) of the Exchange Act established business conduct standards for security-based swap (“SBS”) Dealers and Major SBS Participants (“collectively “SBS Entities”) in their dealings with counterparties, including special entities. In 2016, in order to implement the Dodd-Frank Act, the Commission adopted the BCS Rules for SBS Dealers and Major SBS Participants,<sup>2</sup> a comprehensive set of business conduct standards and chief compliance officer requirements applicable to SBS Entities, that are designed to enhance transparency, facilitate informed customer decision-making, and heighten standards of

professional conduct to better protect investors.<sup>3</sup>

Rules 15Fh-1 through 15Fh-6 and 15Fk-1 require SBS Entities to:

- Verify whether a counterparty is an eligible contract participant and whether it is a special entity;
- Disclose to the counterparty material information about the SBS, including material risks, characteristics, incentives and conflicts of interest;
- Provide the counterparty with information concerning the daily mark of the SBS;
- Provide the counterparty with information regarding the ability to require clearing of the SBS;
- Communicate with counterparties in a fair and balanced manner based on principles of fair dealing and good faith;
- Establish a supervisory and compliance infrastructure; and
- Designate a chief compliance officer that is required to fulfill the described duties and provide an annual compliance report.

The rules also require SBS Dealers to:

- Determine that recommendations they make regarding SBS are suitable for their counterparties.
- Establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each known counterparty that are necessary to conduct business with such counterparty; and
- Comply with rules designed to prevent “pay-to-play.”

The rules also define what it means to “act as an advisor” to a special entity, and require an SBS Dealer who acts as an advisor to a special entity to:

- Make a reasonable determination that any security-based swap or trading strategy involving a security-based swap recommended by the SBS Dealer is in the best interests of the special entity whose identity is known at a reasonably sufficient time prior to the execution of the transaction to permit the SBS Dealer to comply with this obligation; and
- Make reasonable efforts to obtain such information that the SBS Dealer considers necessary to make a reasonable determination that a

security-based swap or trading strategy involving a security-based swap is in the best interests of the known special entity.

In addition, the rules require SBS Entities acting as counterparties to special entities to reasonably believe that the counterparty has an independent representative who meets the following requirements:

- Has sufficient knowledge to evaluate the transaction and risks;
- Is not subject to a statutory disqualification;
- Undertakes a duty to act in the best interests of the special entity;
- Makes appropriate and timely disclosures to the special entity of material information concerning the security-based swap;
- Evaluates, consistent with any guidelines provided by the special entity, the fair pricing and the appropriateness of the security-based swap;
- Is independent of the security-based swap dealer or major security-based swap participant that is the counterparty to a proposed security-based swap.

Under the rules, the special entity’s independent representative must also be subject to pay-to-play regulations, and if the special entity is an ERISA plan, the independent representative must be an ERISA fiduciary.

The information that must be collected pursuant to the BCS Rules is intended to increase accountability and transparency in the market. The information will therefore help establish a framework that protects investors and promotes efficiency, competition and capital formation.

Based on a review of recent data, as of 2018, the Commission estimates the number of respondents to be as follows: 50 SBS Dealers, 5 Major SBS Participants, for a total of 55 “SBS Entities”.<sup>4</sup> Further, we estimate that approximately 46 of these 55 SBS Entities will be dually registered with the CFTC as Swap Entities. We also estimate that there are currently 13,137 security-based swap market participants of which 8,802 are also swap market participants. In 2018, there were approximately 593,364 security-based swap transactions between an SBS Dealer and counterparty that is not an SBS Dealer of which 233,595 were new or amended trades. The Commission estimates there are 370 independent, third-party representatives and 20 in-house independent representatives.<sup>5</sup> We

<sup>1</sup> *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, Exchange Act Release 77617 (Apr. 14, 2016), 81 FR 29959 (May 13, 2016). See also *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants; Correction*, Exchange Act Release 77617A (May 19, 2016), 81 FR 32643 (May 24, 2016). (together, “the Business Conduct Rules for SBSDs and MSBSPs” or “BCS Rules”)

<sup>2</sup> *Id.*

<sup>3</sup> Commission staff has prepared separate supporting statements pursuant to the Paperwork Reduction Act (“PRA”) regarding final Rule 3a71-3(c) and Rule 3a71-6, which address the cross-border application of the business conduct standards and the availability of substituted compliance. The Office of Management and Budget (“OMB”) has assigned control number 3235-0717 to Final Rule 3a71-3(c) and 3235-0715 to Final Rule 3a71-6. Final Rule 3a67-10(d) is a definitional rule and does not have a PRA burden associated with it. Rules 3a71-3(a), Rule 15Fh-1 and Rules 15Fh-2(b) and (c) address scope of the rules and definitions and so do not have PRA burdens associated with them.

<sup>4</sup> Unless otherwise noted, estimates were derived from the DTCC-TIW data set (February 2019).

<sup>5</sup> See, Exchange Act Rule 15Fh-5.

estimate that there are approximately 13,706 unique SBS Dealer and non-SBS-Dealer pairs. We have used these estimates in calculating the hour and cost burdens for the rule provisions that

we anticipate have a “collection of information” burden within the meaning of the PRA.

The Commission estimates that the aggregate burden of the ongoing

reporting and disclosures required by the BCS Rules, as described above, is approximately 554,823 hours and \$2,138,000 calculated as follows:

Section	Type of burden	Respondents	Ongoing annual burden (hours)	Ongoing annual burden (cost)	Industry-wide annual burden (hours)	Industry-wide annual burden (cost)
15Fh–3(b), (c), (d): Disclosures—SBS Entities	Reporting .....	55	4,120	\$0	226,600	\$0
15Fh–3(b), (c), (d): Disclosures—SBS Transactions Between SBS Dealer and Non-SBSD Counterparty.	Reporting .....	233,595	1	0	233,595	0
15Fh–3(e), (f): Know Your Counterparty and Recommendations (SBS Dealers).	Reporting .....	50	137	0	6,853	0
15Fh–3(g): Fair and Balanced Communications	Reporting .....	55	2	3,600	110	198,000
15Fh–3(h): Supervision .....	Reporting .....	55	540	4,800	29,700	264,000
15Fh–5: SBS Entities Acting as Counterparties to Special Entities.	Reporting .....	55	390	0	21,450	0
15Fh–5: SBS Entities Acting as Counterparties to Special Entities.	Third-Party Disclosure.	55	390	0	21,450	0
15Fh–6: Political Contributions .....	Reporting .....	50	1	25,600	50	1,280,000
15Fk–1: Chief Compliance Officer .....	Reporting .....	55	273	7,200	15,015	396,000.00
Total .....	.....	.....	.....	.....	554,823	2,138,000

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Lindsay.M.Abate@omb.eop.gov](mailto:Lindsay.M.Abate@omb.eop.gov); and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: July 15, 2019.

**Jill M. Peterson,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-389, OMB Control No. 3235-0444]

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

#### Extension:

Rule 10b-10

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“PRA”), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Rule 10b-10 (17 CFR 240.10b-10) under the Securities and Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 10b-10 requires broker-dealers to convey specified information to customers regarding their securities transactions. This information includes the date and time of the transaction, the identity and number of shares bought or sold, and whether the broker-dealer acts as agent for the customer or as principal for its own account. Depending on whether the broker-dealer acts as agent or principal, Rule 10b-10 requires the disclosure of commissions, as well as mark-up and mark-down information.

For transactions in debt securities, Rule 10b-10 requires the disclosure of redemption and yield information. Rule 10b-10 potentially applies to all of the approximately 3,750 firms registered with the Commission that effect transactions for or with customers.

Based on information provided by registered broker-dealers to the Commission in FOCUS Reports, the Commission staff estimates that on average, registered broker-dealers process approximately 18,843,624,843 order tickets per year for transactions for or with customers. Each order ticket representing a transaction effected for or with a customer generally results in one confirmation. Therefore, the Commission staff estimates that approximately 18,843,624,843 confirmations are sent to customers annually. The confirmations required by Rule 10b-10 are generally processed through automated systems. It takes approximately 30 seconds to generate and send a confirmation. Accordingly, the Commission staff estimates that broker-dealers spend approximately 157,030,207 hours per year complying with Rule 10b-10 ( $18,843,624,843 \times .5 \div 60$ ).

The amount of confirmations sent and the cost of sending each confirmation varies from firm to firm. Smaller firms generally send fewer confirmations than larger firms because they effect fewer transactions. The Commission staff estimates the costs of producing and sending a paper confirmation, including postage, to be approximately 63 cents. The Commission staff also estimates