

PAPERWORK REDUCTION ACT SUBMISSION

SUPPORTING STATEMENT

for the Paperwork Reduction Act New Information Collection Submission for Rule 15Fi-1 – Trade Acknowledgment and Verification of Security-Based Swap Transactions

A. Justification

1. Necessity of Information Collection

Section 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),¹ enacted on July 21, 2010, added Section 15F to the Exchange Act.² Among other things, Section 15F requires security-based swap (“SBS”) dealers and major SBS participants (collectively, “SBS Entities”) to register with the Commission, and directs the Commission to prescribe rules applicable to SBS Entities.

Section 15F(i)(1) of the Exchange Act provides that SBS Entities must “conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.” Section 15F(i)(2) of the Exchange Act provides that the Commission must adopt rules governing documentation standards for SBS Entities.

Proposed rule 15Fi-1 (17 CFR 240.15Fi-1) would prescribe standards related to timely and accurate confirmation and documentation of SBS. Proposed Exchange Act rule 15Fi-1 would require SBS Entities to provide to their counterparties a trade acknowledgment, to provide prompt verification of the terms provided in a trade acknowledgment of transactions from other SBS Entities, and to have written policies and procedures that are reasonably designed to obtain prompt verification of the terms provided in a trade acknowledgment. The Commission proposed Rule 15Fi-1 to promote the efficient operation of the SBS market, and to facilitate market participants’ management of their SBS-related risk.

Proposed rule 15Fi-1 would adopt documentation standards for the timely and accurate acknowledgment and verification of SBS transactions by SBS Entities. The proposed rule contains six paragraphs: (a) definitions of relevant terms; (b) the trade acknowledgment obligations of specific SBS Entities; (c) the prescribed time frames under which a trade acknowledgment must be sent; (d) the form and content requirements of the trade acknowledgment; (e) an SBS Entities’ verification obligations; and (f) a limited exemption for brokers from the requirements of Exchange Act Rule 10b-10.³

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² 15 U.S.C. 78o-8.

³ 17 CFR 240.10b-10.

Under paragraph (b)(1) of proposed rule 15Fi-1, sending an SBS trade acknowledgment would be the obligation of a particular SBS Entity (*i.e.*, an SBS dealer or major-SBS participant) depending on whether the SBS Entity and its counterparty are SBS dealers or major SBS participants and/or any agreements between the counterparties that delineate the trade acknowledgment responsibility. Paragraph (b)(2) of the proposed rule however, would provide that SBS Entities will satisfy this requirement to the extent that an SBS transaction is cleared through the facilities of clearing agency that matches or compares the terms of the transaction. Regardless of how the trade acknowledgment obligation is satisfied however, a trade acknowledgment would be required to be provided within 15 minutes, 30 minutes or 24 hours following execution, depending on whether the transaction is executed and/or processed electronically.⁴

Paragraph (d) of proposed rule 15Fi-1 would require that trade acknowledgments be provided through electronic means and lists the 22 data elements that must be included on each confirmation.⁵ Paragraph (e)(1) of proposed rule 15Fi-1 would require SBS Entities to have written policies and procedures in place reasonably designed to obtain prompt verification of SBS trade acknowledgments. If a transaction is cleared through a clearing agency, paragraph (e)(2) of the proposed rule would also require SBS Entities to comply with the clearing agency's verification procedures. Regardless of the method of transmittal, when an SBS Entity receives a trade acknowledgment, pursuant to paragraph (e)(3) of the proposed rule, it must promptly verify the accuracy of the trade acknowledgment or dispute the terms with its counterparty.

2. Purpose and Use of the Information Collection

The trade acknowledgment and verification requirements of proposed rule 15Fi-1 would apply to both types of SBS Entities depending on whether the entity and its counterparty are SBS dealers or major SBS participants and on any agreements between counterparties addressing the obligation to send a trade acknowledgment. Generally, the transaction details that would be provided in a proposed rule 15Fi-1 trade acknowledgment would serve as a written record by which the counterparties to a transaction memorialize the economic and related terms of a transaction. In effect, the trade acknowledgment would reflect the contract entered into between the counterparties. In addition, proposed rule 15Fi-1's verification requirements are intended to assure that the written record of the transaction

⁴ Under proposed Rule 15Fi-1(c)(1)(i), any transaction that is executed and processed electronically would have to be acknowledged within 15 minutes of execution. Transactions that are not electronically executed but processed electronically would have to be acknowledged within 30 minutes of execution. See proposed Rule 15Fi-1(c)(1)(ii). Finally, proposed Rule 15Fi-1(c)(1)(ii) would require that all other transactions be acknowledged within 24 hours of execution. Proposed paragraph (c)(2) of the rule however, would require that transactions be processed electronically if the counterparties have the ability to do so. As the market for derivatives develops further however, the Commission believes that most SBS transactions will be processed electronically.

⁵ See proposed Rule 15Fi-1(d) (1) through (22).

(i.e. the trade acknowledgment) accurately reflects the terms of the transaction as understood by the respective counterparties. In situations where an SBS Entity is provided a trade acknowledgment that is not an accurate reflection of the agreement, proposed rule 15Fi-1 would require the SBS Entity to dispute the terms of the transaction.

3. Consideration Given to Information Technology

The proposed rule requires SBS Entities to provide all trade acknowledgments electronically. The rule also permits SBS Entities to rely on the services of a clearing agency to provide electronic trade acknowledgments on its behalf. The proposed content of a trade acknowledgment generally mirrors the data that an SBS Entity would report to an SBS data repository pursuant to proposed Regulation SBSR.⁶ Therefore, the proposed rule should allow SBS Entities to use systems and databases designed to comply with Regulation SBSR to also comply with proposed rule 15Fi-1, which would reduce the burden of complying with the proposed rule.

4. Duplication

The proposed rule imposes no duplicate information collection requirements on SBS Entities.

5. Reducing the Burden on Small Entities

The Commission believes that none of the SBS Entities subject to the proposed rule are small entities, and thus, the rule imposes no burden on small entities.

6. Consequences of Not Conducting the Collection

The information is collected as each transaction warrants and therefore there is no way to omit the information collection requirements or require less frequent collection without undermining the purposes of the rule.

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

The information collection is not conducted in a matter that is inconsistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The proposed rule will be published in the Federal Register for notice and public comment. The public may submit comments within 30 days of publication. The Commission will respond to all public comments if and when it adopts the proposed rule.

⁶ See Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 63446 (Nov. 19, 2010) (“SBSR Proposing Release”).

Public comments that have been received may be viewed at the following link on the SEC's Website; <http://www.sec.gov/comments/s7-03-11/s70311.shtml>.

9. Payment or Gift

Not applicable. No payments or gifts are provided in this information collection.

10. Confidentiality

By its terms, information collected pursuant to proposed rule 15Fi-1 will not be available to the public. Under other rules proposed by the Commission, however, most, if not all, of the information required to be included in a trade acknowledgment, as described in paragraph (d) of the proposed rule, will be otherwise publicly available. In particular, under proposed Regulation SBSR,⁷ SBS Entities would be required to report SBS transaction details to a SBS data repository that will in turn, publicly disseminate SBS transaction data. To the extent however, that the Commission receives confidential information pursuant to this collection of information that is otherwise not publicly available, that information will be kept confidential, subject to the provisions of the Freedom of Information Act.

11. Sensitive Questions

Not applicable; no information of a sensitive nature is required under the rule.

12. Burden of Information Collection

Proposed rule 15Fi-1 would only apply to SBS Entities, that is to SBS dealers and major SBS participants. The Commission believes that approximately 50 entities may fit within the definition of SBS dealer, and up to five entities may fit within the definition of major SBS participant. Thus, approximately 55 entities may be required to register with the Commission as SBS Entities and would be subject to the trade acknowledgment provision and verification requirements of proposed rule 15Fi-1.⁸

a. Trade Acknowledgment Requirement

Pursuant to proposed rule 15Fi-1, all SBS transactions would have to be acknowledged and verified through the methods and by the timeframes prescribed in the proposed rule. Collectively, paragraphs (b), (c), (d) and (e) of proposed rule 15Fi-1 identify the information that is to be included in a trade acknowledgment; the party responsible for sending the trade acknowledgment; the permissible methods for sending the trade acknowledgment; and criteria

⁷ See SBSR Proposing Release.

⁸ We note that many clearing agencies already have facilities that would permit SBS Entities to acknowledge and verify SBS transactions in addition to other services provided by the clearing agency.

for verifying the terms of a trade acknowledgment, thereby imposing a third-party disclosure burden. The Commission estimates there are on average 36,000 single-name credit-default swap (“CDS”) transactions per day,⁹ resulting in a total number of 13,140,000 CDS transactions per year. The Commission estimates that CDSs represent 85% of all SBS transactions.¹⁰ Assuming that at least one SBS Entity is a party to every SBS transaction, the Commission estimates that the total number of SBS transactions that would be subject to proposed 15Fi-1 on an annual basis would be approximately 15,460,000 which is an average of 281,091 transactions per SBS Entity per year.¹¹

The Commission estimates that the development of order management systems (each, an “OMS”) by SBS Entities for electronic processing of SBS transactions with the capabilities described above would impose a one-time aggregate burden of approximately 19,525 hours, or 355 burden hours per SBS Entity (or, amortized over three years, approximately 6,509 hours in the aggregate, and approximately 118.3 hours per SBS Entity).¹²

The Commission further estimates that proposed rule 15Fi-1 would impose an ongoing annual hour burden of approximately 23,980 hours or 436 hours per SBS Entity.¹³ This estimate would include day-to-day technical support of the OMS, as well as the amortized annual burden associated with system or platform upgrades and periodic implementation of significant updates based on new technology, products, or both.

The total of the estimated one-time burdens amortized over three years plus the estimated ongoing annual burden is thus 30,489 hours for all SBS entities (6,509 hours + 23,980 hours).

⁹ See, e.g., http://www.dtcc.com/products/derivserv/data_table_iii.php (weekly data as updated by DTCC).

¹⁰ The Commission’s estimate is based on internal analysis of available SBS market data. The Commission is seeking comment about the overall size of the SBS market.

¹¹ These figures are based on the following: $[13,140,000 / 0.85] = 15,458,824$, or approximately 15,460,000. $(15,460,000 \text{ estimated SBS transactions}) / (55 \text{ SBS Entities}) = 281,091 \text{ SBS transactions per SBS Entity per year}$.

¹² This estimate is based on Commission staff discussions with market participants and is calculated as follows: $[(\text{Sr. Programmer at 160 hours}) + (\text{Sr. Systems Analyst at 160 hours}) + (\text{Compliance Manager at 10 hours}) + (\text{Director of Compliance at 5 hours}) + (\text{Compliance Attorney at 20 hours})] \times 55 \text{ (SBS Entities)} = 19,525 \text{ burden hours at 355 hours per SBS Entity}$. The Commission understands that many SBS Entities may already computerized systems in place for electronically processing SBS transactions, whether internally or through a clearing agency. This may result in lesser burdens for those parties

¹³ This estimate is based on Commission staff discussions with market participants and is calculated as follows: $[(\text{Sr. Programmer at 32 hours}) + (\text{Sr. Systems Analyst at 32 hours}) + (\text{Compliance Manager at 60 hours}) + (\text{Compliance Clerk at 240 hours}) + (\text{Director of Compliance at 24 hours}) + (\text{Compliance Attorney at 48 hours})] \times 55 \text{ (SBS Entities)} = 23,980 \text{ burden hours, or 436 hours per SBS Entity}$.

b. Policies and Procedures

In addition, pursuant to paragraph (e)(1) of proposed rule 15Fi-1, SBS Entities must develop written policies and procedures reasonably designed to obtain prompt verification of transaction terms from non-SBS Entities. This requirement constitutes a recordkeeping requirement. While the cost of these policies and procedures will vary, the Commission estimates that such policies and procedures would require an average of 80 hours per respondent to initially prepare and implement, with a total initial burden of 4,400 hours for all respondents (or, amortized over three years, approximately 1,466.666666667 hours in the aggregate, and approximately 26.666666667 hours per SBS Entity).¹⁴ Once these policies and procedures are established, the Commission estimates that it will take an average 40 hours annually to maintain these policies and procedures per respondent, with a total estimated average annual burden of 2,200 hours for all respondents.¹⁵

The total of the estimated one-time burdens amortized over three years plus the estimated ongoing annual burden is thus approximately 3,666.666666667 hours for all SBS entities (1,466.666666667 hours + 2,200 hours).

13. Costs to Respondents

a. Trade Acknowledgment Requirement

The Commission estimates that proposed Rule 15Fi-1(b) will impose no cost to respondents to provide trade acknowledgments.

b. Policies and Procedures

The Commission estimates that proposed Rule 15Fi-1(e)(1) will impose no cost to respondents to produce policies and procedures.

14. Costs to Federal Government

The Commission estimates that proposed Rule 15Fi-1 will impose no costs to the federal government.

15. Reason for Change

¹⁴ This estimate is based on Commission staff discussions with market participants and is calculated as follows: [(Compliance Attorney at 40 hours) (Director of Compliance at 20 hours) + (Deputy General Counsel at 20 hours) x (55 SBS Entities)] = 4,400 burden hours, or 80 hours per SBS Entity.

¹⁵ This estimate is based on Commission staff discussions with market participants and is calculated as follows: [(Compliance Attorney at 20 hours) (Director of Compliance at 10 hours) + (General Counsel at 10 hours) x (55 SBS Entities)] = 2,200 burden hours, or 40 hours per SBS Entity.

The Commission proposed rule 15Fi-1 in order to comply with the requirements of Section 15F(i)(2) of the Exchange Act that requires the Commission to adopt rules governing documentation standards for SBS Entities. Section 15F(i)(1) of the Exchange Act provides that SBS Entities must “conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.”

16. Information Collection Planned for Statistical Purposes

Not applicable; there is no intention to publish the information for any purpose.

17. Display of OMB Approval Date

Not applicable.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements of 5 CFR 1320.9.

B. Collection of Information Employing Statistical Methods

The collection of information does not employ statistical methods, nor would the implementations of such methods reduce the burden or improve the accuracy of results.