

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for Exchange Act
Rule 3a71-6: Substituted Compliance for Foreign Security-Based Swap Entities
OMB No. 3235-0715
Revision

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

Various requirements contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Title VII”) apply to cross-border security based swap transactions. There accordingly is a potential that, in a market as global as the security-based swap market, market participants who engage in cross-border security-based swap activity that could be subject to conflicting or duplicative compliance obligations across multiple jurisdictions, including obligations in connection with the business conduct requirements that the Commission has adopted in Exchange Act rules 15Fh-1 to 15Fh-6, and 15Fk-1. The Commission accordingly has developed a policy and procedural framework under which the Commission will consider permitting compliance with comparable regulatory requirements in a foreign jurisdiction to substitute for compliance with certain Title VII requirements relating to security-based swaps (i.e., “substituted compliance”).

On April 13, 2016, the Commission adopted the initial set of rules under the Securities Exchange Act of 1934 (“Exchange Act”) that are intended to implement provisions of Title VII relating to business conduct standards and the designation of a chief compliance officer for security-based swap dealers and major security-based swap participants and also address the cross-border application of the rules and the availability of substituted compliance.¹

On June 21, 2019, the Commission amended Rule 3a71-6 to add a new set of rules to provide that foreign SBSs and foreign MSBSPs may apply for substituted compliance to satisfy capital and margin requirements which the Commission adopted under section 15F of the Exchange Act the same day.² On September 16, 2019, the Commission amended Rule 3a71-6 to

¹ See *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, Exchange Act Release No. 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).

The Commission subsequently amended Rule 3a71-6 to also provide for the possibility of substituted compliance in connection with trade acknowledgement and verification requirements. See Exchange Act Release No. 78011 (Jun. 8, 2016), 81 FR 39808 (Jun. 17, 2016).

² See *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, Exchange Act Release No. 86175 (Jun. 21, 2019), 84 FR 43872 (Aug. 22, 2019).

provide that foreign SBSDs and foreign MSBSPs may apply for substituted compliance to satisfy rules governing reporting and recordkeeping for SBSDs and MSBSPs which the Commission adopted under section 15F of the Exchange Act the same day.³ This Supporting Statement provides information regarding the changes in estimated burdens associated with the September 16, 2019 amendments to Rule 3a71-6.

Rule 3a71-6 provides that the Commission may, conditionally or unconditionally, by order, make a determination with respect to a foreign financial regulatory system that compliance with specified requirements under such foreign financial regulatory system by a registered non-U.S. security-based swap dealer or non-U.S. major security-based swap participant (collectively “SBS Entities), or class thereof, may satisfy certain business conduct requirements, capital and margin requirements, and recordkeeping and reporting requirements by complying with the comparable foreign requirements. The availability of substituted compliance would be predicated on a determination by the Commission that the relevant foreign requirements are comparable to the requirements that otherwise would be applicable, taking into account the scope and objectives of the relevant foreign requirements, and the effectiveness of supervision and enforcement under the foreign regulatory regime.

As provided by Exchange Act Rule 0-13, which the Commission adopted in 2014, applications for substituted compliance determinations in connection with these requirements must be accompanied by supporting documentation necessary for the Commission to make the determination, including information regarding applicable requirements established by the foreign financial regulatory authority or authorities, as well as the methods used by the foreign financial regulatory authority or authorities to monitor and enforce compliance with such rules, and to cite to and discuss applicable precedent. Rule 0-13 also specifies other prerequisites for the filing of substituted compliance applications (*e.g.*, requirements regarding the use of English, the use of electronic or paper requests, contact information, and public notice and comment in connection with complete applications).⁴

As noted above, Rule 3a71-6 was initially adopted in April 2016 as part of the SEC’s rules implementing business conduct standards for SBS entities. It was amended twice in 2019: once in June 2019 to include the SEC’s capital and margin requirements applicable to SBS entities as provisions for which foreign SBS entities could seek approval to use substituted compliance, and again in September 2019 to include the SEC’s recordkeeping and reporting requirements applicable to SBS entities. The 2019 amendments to Rule 3a71-6 were not part of the proposed rules relating to capital, margin, recordkeeping and reporting. Instead, when the Commission adopted Rule 3a71-6, it reserved the issue as to whether substituted compliance would also be available in connection with other requirements (*e.g.*, capital, margin,

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 *Application of “Security-Based Swap Dealer” and “Major Security-Based Swap Participant” Definitions to Cross-Border Security-Based Swap Activities; Republication*, Exchange Act Release No. 72472 (June 25, 2014), 79 FR 47277 (Aug. 12, 2014).

recordkeeping, and reporting).⁵ As a result, the Commission adopted amendments to Rule 3a71-6 to address substituted compliance for capital, margin, recordkeeping and reporting requirements at the same time that it adopted the substantive requirements in those areas.

A supporting statement was submitted to and approved by OMB with respect to the initial April 2016 adoption⁶ and the June 2019 amendments.⁷ However, due to an oversight, a supporting statement was not submitted with respect to the September 2019 amendments prior to the rule amendments becoming effective. We are seeking to revise the estimated burdens in light of the September 2019 amendments for OMB review and are seeking expedited review if possible.

2. Purpose and Use of the Information Collection

The Commission will use the information collected pursuant to Exchange Act Rule 3a71-6 to evaluate requests for substituted compliance with respect to the business conduct requirements applicable to security-based swap entities. The requests for substituted compliance determinations are required when a person seeks a substituted compliance determination. Consistent with Exchange Act Rule 0-13(h), the Commission will publish in the *Federal Register* a notice that a complete application has been submitted, and provide the public the opportunity to submit to the Commission any information that relates to the Commission action requested in the application, subject to requests for confidential treatment being submitted pursuant to any applicable provisions governing confidentiality under the Exchange Act.

3. Consideration Given to Information Technology

Exchange Act rule 0-13 provides that applications for a substituted compliance determination may be submitted in paper format or electronically. Applications submitted electronically must be submitted to the electronic mailbox described on the Commission's Web site. The rule permits electronic submission of applications in order to reduce the burden on applicants and streamline the submission process, while also permitting submission of paper applications to give applicants flexibility in their form of submission.

4. Duplication

Rule 3a71-6 does not duplicate any existing regulatory requirements. There are no other rules governing substituted compliance for foreign security-based swap dealers.

⁵ 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, 68597 (Dec. 16, 2019).

⁶ See https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201604-3235-012.

⁷ See https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202001-3235-006.

5. Effect on Small Entities

Not applicable. None of the respondents subject to the information collection will be a small entity.⁸

6. Consequences of Not Conducting Collection

The information collection under Rule 3a71-6 is designed to enable the Commission to permit compliance with comparable regulatory requirements in a foreign jurisdiction to substitute for compliance with certain Title VII requirements relating to security-based swaps, and thereby mitigate the threat that a market participant who engages in cross-border security-based swap transactions could be subject to conflicting or duplicative compliance obligations across multiple jurisdictions. If the information collection under Rule 3a71-6 is not completed with respect to a given foreign jurisdiction, the Commission may be unable to make a substituted compliance determination with respect such foreign jurisdiction.

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 Commission requested comment on the collection of information requirements in the proposing release in May 2013.⁹

9. Payment or Gift

Not applicable. No payment or gift is provided to respondents.

10. Confidentiality

The Commission intends to make public the information submitted to it pursuant to any request for a substituted compliance determination under Rule 3a71-6, including supporting documentation provided by the requesting party, though requestors may seek confidential treatment of their applications to the extent permitted under Commission rules. If confidential

⁸ 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 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).

⁹ See Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30967 (May 23, 2013).

treatment is granted, such information would be kept confidential, subject to the provisions of applicable law (e.g., Exchange Act sections 24(d) and 24(f)(2)).

11. Sensitive Questions

The collection of information contained in Rule 3a71-6 may include Personally Identifiable Information (“PII”)¹⁰ in that applicants submitting substituted compliance requests to the Commission pursuant to 3a71-6 are required to follow the procedures set forth in Rule 0-13. Specifically, Rule 0-13(e) states that “[e]very application (electronic or paper) must contain the name, address, telephone number, and email address of each applicant and the name, address, telephone number, and email address of a person to whom any questions regarding the application should be directed.” This information collection does not include social security numbers. It will include limited PII name, business address, and telephone numbers of persons responsible for completing the applications submitted by the foreign SBSDS and MSBSP. In accordance with Section 208 of the E-Government Act of 2002, the information collection will be covered by the GSS PIA. Pursuant to the Privacy Act of 1974, the applicable SORN has been identified as SEC-70 SEC’s Division of Trading and Markets Records, 83 Fed. Reg. 6892.

Further, Commission staff does not expect to be able to search and retrieve a substituted compliance request using PII. As such, we believe that the treatment of any PII provided with the collection of information associated with this rule is not likely to implicate the Federal Information Security Management Act of 2002 or the Privacy Act of 1974.

12. Burden of Information Collection

A request for a substituted compliance determination under Rule 3a71-6 may come from a registered foreign SBS Entity (or a group of such entities), or from foreign regulatory authorities. The Commission will make any determinations with respect to particular requirements on a class or jurisdiction basis, depending on the specific characteristics of the foreign regulatory regime, rather than on a firm-by-firm basis. Once the Commission has made an affirmative substituted compliance determination with respect to a particular jurisdiction, other similarly situated foreign SBS Entities within such jurisdiction would be able to rely on that determination to the extent applicable and subject to any corresponding conditions. Similarly, if the Commission makes a determination to reject a request for a substituted compliance determination with respect to a particular jurisdiction, such determination would apply to other similarly situated entities within such jurisdiction. Therefore, a registered foreign entity would not be required to make a request with respect to rules and regulations of a foreign jurisdiction that have previously been the subject of a substituted compliance determination.

As set forth in greater detail below, the Commission previously submitted burden estimates associated with Rule 3a71-6 with respect to substituted compliance determinations regarding business conduct requirements, and capital and margin requirements. These burden

¹⁰ The term “Personally Identifiable Information” refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.

estimates were previously reviewed and approved and have not changed. In this Supporting Statement, the Commission is adding a third burden estimate with respect to substituted compliance determinations for recordkeeping and reporting requirements associated with the amendments made to Rule 3a71-6 that were adopted on September 16, 2019.

Based on the analysis of recent data, the Commission staff expects that there may be approximately 22 non-U.S. entities that potentially may register as security-based swap dealers, out of approximately 50 total entities that may register as security-based swap dealers. Potentially, all such non-U.S. security-based swap dealers, or some subset thereof, may seek to rely on substituted compliance in connection with the applicable requirements.¹¹ It is likely that the majority of such requests will be made in the two years preceding the compliance date for security-based swap dealer registration.

In practice, the Commission expects that the greater portion of any such substituted compliance requests will be submitted by foreign financial authorities, given their expertise in connection with the relevant substantive requirements, and in connection with their supervisory and enforcement oversight with regard to security-based swap dealers and their activities. For purposes of this assessment, the Commission estimates:

- Three SBSs or MSBSPs will submit requests for substituted compliance determinations with respect to the Commission's business conduct requirements, chief compliance officer requirements, and trade acknowledgement and verification requirements,
- Three SBSs or MSBSPs will submit requests for substituted compliance determinations with respect to the Commission's capital and margin requirements promulgated under section 15F of the Exchange Act, and the Commission's reporting and recordkeeping requirements promulgated under section 15F of the Exchange Act.

These estimates have been previously reviewed and approved and have not changed. The following burden estimate described below is a new burden estimate for recordkeeping and reporting requirements based on the amendments adopted to Rule 3a71-6 adopted on September 16, 2019. Accordingly, the Commission estimates:

- Three SBSs or MSBSPs will submit requests for substituted compliance determinations with respect to the Commission's reporting and recordkeeping requirements promulgated under section 15F of the Exchange Act.

The Commission staff estimates that the one-time reporting burden associated with each substituted compliance request pursuant to Rule 3a71-6 in connection with each of these requirements will occur in the first year and will consist of approximately 80 hours of in-house counsel time. Thus, the Commission staff estimates the following aggregate burdens for all

¹¹ Consistent with prior estimates, the Commission staff further believes that there may be zero to five major security-based swap participants. It is possible that some subset of those entities will be non-U.S. major security-based swap participants that will seek to rely on substituted compliance in connection with the business conduct requirements.

respondents associated with preparing and submitting requests for a substituted compliance determination:

- 240 hours in connection with the Commission’s business conduct requirements, the Commission’s chief compliance officer requirements, and the Commission’s trade acknowledgement and verification requirements.¹² **Based on these calculations, the annualized three year estimate is 26.67¹³ hours per respondent on an annual basis and the three-year estimate of the hourly burden across all respondents is 80 hours.**¹⁴
- 240 hours in connection with the Commission’s capital and margin requirements promulgated under section 15F of the Exchange Act.¹⁵ **Based on these calculations, the annualized three year estimate is 26.67¹⁶ hours per respondent on an annual basis and the three-year estimate of the hourly burden across all respondents is 80 hours.**¹⁷
- 240 hours in connection with the Commission’s reporting and recordkeeping requirements promulgated under section 15F of the Exchange Act.¹⁸ **Based on these calculations, the annualized three year estimate is 26.67¹⁹ hours per respondent on an annual basis and the three-year estimate of the hourly burden across all respondents is 80 hours.**²⁰

Thus, the total estimated industry-wide burden for preparing and submitting both types of requests for a substituted compliance determination is 720 hours.²¹ Based on these calculations, the annualized three year estimate is 80 hours per respondent on an annual

¹² 80 hours * 3 estimated requests for substituted compliance determinations with respect to business conduct, chief compliance officer, and trade acknowledgement and verification requirements = 240 hours.

¹³ (First year: 80 hours; second year: 0 hours; third year: 0 hours) ÷ 3 years = 26.67 hours per respondent.

¹⁴ 26.67 hours per respondent * 3 respondents = 80 hours.

¹⁵ 80 hours * 3 estimated requests for substituted compliance determinations with respect to capital and margin requirements = 240 hours.

¹⁶ (First year: 80 hours; second year: 0 hours; third year: 0 hours) ÷ 3 years = 26.67 hours per respondent.

¹⁷ 26.67 hours per respondent * 3 respondents = 80 hours.

¹⁸ 80 hours * 3 estimated requests for substituted compliance determinations with respect to reporting and recordkeeping requirements = 240 hours.

¹⁹ (First year: 80 hours; second year: 0 hours; third year: 0 hours) ÷ 3 years = 26.67 hours per respondent.

²⁰ 26.67 hours per respondent * 3 respondents = 80 hours.

²¹ 240 hours (business conduct, chief compliance officer, and trade acknowledgement and verification) + 240 hours (capital and margin) + 240 hours (reporting and recordkeeping) = 720 hours.

basis,²² and **the total annual estimate of the hourly burden across all respondents is 240 hours.**²³

These total burdens include all collection burdens associated with Rule 3a71-6, including burdens associated with analyzing and comparing the regulatory requirements of the foreign jurisdiction with the business conduct requirements in Section 15F of the Exchange Act and the rules and regulations thereunder.

Collection of Information	Type of Burden	Total Number of Respondents	Total Number of Responses Per Year	Type of Burden	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	Small Business Entities Affected
Rule 3a71-6(d)(1)-(3)	Reporting	3	1	Initial	26.67	0.00	26.67	80	0
Rule 3a71-6(d)(4)-(5)	Reporting	3	1	Initial	26.67	0.00	26.67	80	0
Rule 3a71-6(d)(6)	Reporting	3	1	Initial	26.67	0.00	26.67	80	0
TOTAL ANNUAL BURDEN HOURLY FOR ALL RESPONDENTS								240.00	

13. Costs to Respondents

The Commission believes that a registered SBS Entity (or a group of such entities) requesting a substituted compliance determination will seek outside legal services in the preparation of such requests. For PRA purposes, the Commission assumes that three such entities would seek outside legal services for the first year only and would, on average, consult with outside counsel for 200 hours, which would cost \$252,000²⁴ across all applicable respondents for each request:

²² [(80 hours + 80 hours + 80 hours (first year)) + 0 hours (second year) + 0 hours (third year)] ÷ 3 years = 80 hours per respondent.

²³ 80 hours per respondent * 3 respondents = 240 hours.

²⁴ In initially adopting Rule 3a71-6 in 2016, the Commission used the following burden estimate: 3 (estimated number of entities that would seek outside counsel to help request a substituted compliance determination) × 200 hours (average estimated time spent by outside counsel to help request a substituted compliance determination) × \$400 (hourly rate for an outside attorney) = \$240,000. The hourly cost estimate of \$400 was based on Commission staff conversations with law firms that regularly assist regulated financial firms with compliance matters.

The cost estimates associated with revisions to Rule 3a71-6 regarding capital and margin requirements, which were previously reviewed and approved, increased the prior estimates by five percent to account for inflation, resulting in a total of \$252,000 in the aggregate and \$84,000 per firm. This increase is also used in connection with the new cost estimates associated with the amendments to Rule 3a71-6 regarding recordkeeping and reporting requirements.

- \$252,000 in connection with the Commission’s **business conduct requirements**, the Commission’s chief compliance officer requirements and the Commission’s trade acknowledgement and verification requirements,²⁵ and
- \$252,000 in connection with the Commission’s **capital and margin requirements** promulgated under section 15F of the Exchange Act.²⁶

As with the estimated burdens described above, the estimated costs associated with business conduct requirements, and capital and margin requirements were previously reviewed and approved. These cost estimates have not changed. The following cost estimate is a new cost estimate for recordkeeping and reporting requirements based on the amendments adopted to Rule 3a71-6 adopted on September 16, 2019, which are described above. Accordingly, the Commission estimates a cost of:

- \$252,000 in connection with the Commission’s **reporting and recordkeeping requirements** promulgated under section 15F of the Exchange Act.²⁷

The Commission also assumes that none of the three respondents would seek outside legal services for year two or year three (i.e., this would be a one-time cost burden). The total labor cost per respondent would be approximately \$84,000,²⁸ or approximately \$28,000²⁹ when annualized over three years for each request. **Thus, the cost over the three-year period would be \$252,000³⁰ or \$84,000³¹ per year when annualized over three years, for each of the three requests.**

Thus, the total estimated industry-wide cost of retaining outside legal services for a substituted compliance determination is \$,³² **or \$252,000 per year when annualized over three years.**³³

²⁵ \$84,000 * 3 estimated requests for substituted compliance determinations with respect to business conduct requirements = \$252,000.

²⁶ \$84,000 * 3 estimated requests for substituted compliance determinations with respect to capital and margin requirements = \$252,000.

²⁷ \$84,000 * 3 estimated requests for substituted compliance determinations with respect to reporting and recordkeeping requirements = \$252,000.

²⁸ \$252,000 (total labor cost to seek outside counsel, over three years) ÷ 3 (estimated number of entities that would seek outside counsel to help request a substituted compliance determination) = \$84,000.

²⁹ \$84,000 (cost per respondent, over three years) ÷ 3 years = \$28,000.

³⁰ \$84,000 per respondent * 3 respondents = \$252,000.

³¹ \$252,000 (cost over three years) ÷ 3 years = \$84,000.

³² \$252,000 (business conduct, chief compliance office, and trade acknowledgement and verification) + \$252,000 (capital and margin) + \$252,000 (reporting and recordkeeping) = \$756,000.

³³ \$756,000 ÷ 3 years = \$252,000.

Collection of Information	Type of Burden	Total Number of Respondents	Total Number of Responses Per Year	Type of Burden	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	Small Business Entities Affected
Rule 3a71-6(d)(1)-(3)	Reporting	3	1	Initial	\$28,000	0.00	\$28,000	\$84,000	0
Rule 3a71-6(d)(4)-(5)	Reporting	3	1	Initial	\$28,000	0.00	\$28,000	\$84,000	0
Rule 3a71-6(d)(6)	Reporting	3	1	Initial	\$28,000	0.00	\$28,000	\$84,000	0
TOTAL ANNUAL COST FOR ALL RESPONDENTS								\$252,000.00	

14. Cost to Federal Government

Not applicable. The Commission does not anticipate any contracting, IT, or development costs, and does not anticipate hiring new employees in connection with the information collection.

15. Changes in Burden

The burden has increased as a result of an increase in the number of respondents that the Commission estimates will submit substituted compliance determinations with respect to the Commission’s reporting and recordkeeping requirements. Specifically, as described above, the Commission estimated that, as a result of amendments to Rule 3a71-6 providing that foreign SBSs and foreign MSBSPs may apply for substituted compliance to satisfy rules governing reporting and recordkeeping for SBSs and MSBSPs, three SBSs or MSBSPs will submit requests for substituted compliance determinations with respect to the Commission’s reporting and recordkeeping requirements promulgated under section 15F of the Exchange Act. This would impose burdens and costs in addition to the burdens and costs that were previously reviewed and approved. Accordingly, the Commission estimates that the burdens associated with this rule will increase by 80 hours, and the estimated costs by \$84,000. The changes in estimated burden and cost are being submitted in response to the amendments to Rule 3a71-6, described above, that were not previously submitted for review. These changes are summarized in the table below.

Name of Information Collection	Annual Industry Burden	Annual Industry Burden Previously Reviewed	Change in Burden	Reason for Change
Rule 3a71-6(d)(6) (Hour Burden)	80	0	80	Amendment to the rule.
Rule 3a71-6(d)(6) (Cost Burden)	\$84,000	0	\$84,000	Amendment to the rule.

16. Information Collection Planned for Statistical Purposes

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.