

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 15b11-1 and Form BD-N
OMB Control No. 3235-0556

This submission is being made pursuant to the Paperwork Reduction Act of 1995 (“PRA”), 44 U.S.C. Section 3501 et seq.¹

A. JUSTIFICATION

1. Necessity of Information Collection

Congress enacted the Commodity Futures Modernization Act of 2000 (“CFMA”)² to, among other things, permit transactions in security futures products, which are both securities for purposes of the Securities Exchange Act of 1934 (“Exchange Act”) and futures contracts for purposes of the Commodity Exchange Act. Section 203(a) of the CFMA added Section 15(b)(11) to the Exchange Act, which provides that futures commission merchants (“FCMs”) and introducing brokers (“IBs”) that are registered with the Commodity Futures Trading Commission (“CFTC”) may register with the Commission as broker-dealers for the purpose of effecting transactions in security futures products by filing a written notice with the Commission.³

In 2001, to implement Section 203(a) of the CFMA and Section 15(b)(11)(A) of the Exchange Act, the Commission promulgated Rule 15b11-1 (17 CFR 240.15b11-1) and Form BD-N (17 CFR 249.501b) to provide for the form of notice FCMs and IBs may use to register as broker-dealers by notice.⁴ Rule 15b11-1(b) and Form BD-N require a

¹ In 2011, the Commission proposed Rule 15Fi-1 to prescribe standards to provide for timely and accurate confirmation of security-based swaps transactions. See Trade Acknowledgment and Verification of Security-Based Swap Transactions, Exchange Act Release No. 63727 (Jan. 14, 2011), 76 FR 3859 (Jan. 21, 2011) (“Proposing Release”). Proposed Rule 15Fi-1 was an information collection and was assigned OMB Number 3235-0713. Proposed Rule 15Fi-1 was later separated into, and adopted as, two rules: Rule 15Fi-1, which contains definitions, and Rule 15Fi-2, which contains the substantive requirements, exceptions, and exemption. See Trade Acknowledgment and Verification of Security-Based Swap Transactions, Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39807 (June 17, 2016) (“Adopting Release”). The Adopting Release stated, “Final Rule 15Fi-1 ... is not a ‘collection of information’” and “[t]he title of the new information collection will be ‘Rule 15Fi-2—Trade Acknowledgment and Verification of Security-Based Swap Transactions.’” *Id.* at 39829. The reference to “Rule 15Fi-1” in the title of the information collection, however, was not changed to “Rule 15Fi-2” in the PRA submission for the Adopting Release. Therefore, it is being changed with this submission.

² Pub. L. No. 106-554, Appendix E, 114 Stat. 2763A-365 (2000).

³ *See* 15 U.S.C. 78o(b)(11).

⁴ *See* Registration of Broker-Dealers Pursuant to Section 15(b)(11) of the Securities Exchange Act of 1934, Exchange Act Release No. 44730 (Aug. 21, 2001), 66 FR 45137-50 (Aug. 27, 2001).

broker-dealer registering by notice to indicate whether it is filing a notice registration to conduct a securities business in security futures products and, if so, that it satisfies the statutory conditions for notice registration. Rule 15b11-1(c) and Form BD-N require notice-registered broker-dealers to file an amended Form BD-N promptly if any of the information reported on the form is or becomes inaccurate.

2. Purpose and Use of the Information Collection

Form BD-N is used to elicit basic identification information as well as information that allows the Commission staff to ensure that FMCs and IBs meet the statutory conditions for registration by notice pursuant to Section 15(b)(11) of the Exchange Act. Without the information elicited by the Form BD-N, the Commission would be unable to fulfill its regulatory obligations.

3. Consideration Given to Information Technology

Form BD-N may be filed electronically with the National Futures Association (“NFA”). A fillable PDF template of the NFA Form 7-R that is used as an alternative to Form BD-N is available on the NFA’s website at <http://www.nfa.futures.org/NFA-registration/templates-and-forms/Form7-R-entire.pdf>.

4. Duplication

Requiring the filing of Form BD-N with the NFA, and not also requiring the filing of the form with the Commission, reduces the regulatory burden on respondents by permitting them to file initial registration notices and amendments at one central location, rather than at multiple locations.

5. Effect on Small Entities

As part of the Commission’s proposal to adopt Rule 15b11-1 and a form of notice registration, the Commission’s Acting Chairman certified pursuant to 5 U.S.C. 605(b) that the proposal would not, if adopted, have a significant economic impact on a substantial number of small entities.⁵ The Acting Chairman also noted that the only impact of the proposal would be on FCMs and IBs that choose to register by notice to do business in

⁵ See Registration of Broker-Dealers Pursuant to Section 15(b)(11) of the Securities Exchange Act of 1934, Exchange Act Release No. 4455 (June 20, 2001), 66 FR 34041, 34052-53 (June 26, 2001).

security futures products, and that notice registrants would be required only to provide information.⁶

6. Consequences of Not Conducting Collection

Notice-registered broker-dealers are required to file Form BD-N only once to register, and are required to file amendments to Form BD-N only when information earlier reported on Form BD-N changes or becomes inaccurate. Therefore, less frequent collection of Form BD-N information would impair the accuracy of the information available to the Commission and decrease the protections afforded to investors.

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

The Commission makes the information obtained on Form BD-N available to the public.

11. Sensitive Questions

The Information Collection does not collect information about individuals, but rather only business contact information: therefore, a PIA, SORN, and PAS are not required.

12. Information Collection Burden

The NFA received zero initial registration by notice on Form BD-N in calendar year 2019, zero in 2020, and zero in 2021. Based on this data, Commission staff estimates

⁶ *Id.*

that the NFA will receive approximately zero Form BD-N initial filings per year.⁷ Commission staff has estimated that the average time necessary to complete an initial Form BD-N filing is approximately 30 minutes.⁸ Therefore, Commission staff estimates that the annual burden hours associated with reporting information on initial filings of Form BD-N is approximately zero hours.⁹

After filing an initial Form BD-N, a notice-registered broker-dealer must promptly report corrected information on an amended Form BD-N if information earlier reported on the form changes or becomes inaccurate. The NFA received four Form BD-N amendments in calendar year 2019, 16 in calendar year 2020, and 12 in calendar year 2021. Based on this data, Commission staff estimates that the NFA will receive approximately eleven Form BD-N amendments per year.¹⁰ Commission staff has estimated that the average time necessary to complete a Form BD-N amendment is approximately 15 minutes.¹¹ Therefore, Commission staff estimates that the annual burden hours associated with reporting information by filing Form BD-N amendments is approximately 3 hours.¹²

Based on the foregoing estimates, Commission staff estimates that the total annual burden hours associated with reporting information on Form BD-N in compliance with Rule 15b11-1 is approximately three hours.¹³

⁷ (0 initial application in 2019 + 0 initial applications in 2020 + 0 initial applications in 2021) = 0 initial applications in 3 years; (0 initial applications / 3 years) = 0 initial applications per year.

⁸ See Registration of Broker-Dealers Pursuant to Section 15(b)(11) of the Securities Exchange Act of 1934, Exchange Act Release No. 44730 (Aug. 21, 2001), 66 FR 45137, 45138 (Aug. 27, 2001).

⁹ (0 initial applications annually x 0.5 hours per application) = 0 hour annually for initial applications.

¹⁰ (4 amendments + 16 amendments + 12 amendments) = 32 amendments; (32 amendments / 3 years) = 10.66 amendments per year on average, rounded up to 11.

¹¹ See Registration of Broker-Dealers Pursuant to Section 15(b)(11) of the Securities Exchange Act of 1934, Exchange Act Release No. 44730 (Aug. 21, 2001), 66 FR 45137, 45138 (Aug. 27, 2001).

¹² (11 amendments annually x 0.25 hours per amendment) = 2.75 hours annually for amendments, rounded up to 3 hours.

¹³ (0 hour for initial applications annually + 3 hours for amendments annually) = 3 total hours annually.

Form type	Burden type	Annual number of responses received	Hours per response	Total burden per burden type (hours)
Form BD-N	Initial reporting	0	0.5	0
Form BD-N amendments	Periodic reporting	11	0.25	2.75, rounded up to 3
<i>Total burden</i>				3 hours

Commission staff assumes that a notice-registered broker-dealer would have a compliance department employee, at \$344 per hour,¹⁴ ensure that the firm is compliant with filing and amending Form BD-N as required by Rule 15b11-1. Therefore, Commission staff estimates that the total annual internal cost of compliance to respondents associated with reporting information on Form BD-N is approximately \$1,032.¹⁵

13. Costs to Respondents

The Rule does not impose any costs aside from internal compliance costs associated with the burden hours discussed in item 12 above.

14. Costs to Federal Government

Because the NFA has agreed to accept and process all Form BD-N filings for initial applications for registration by notice and amendments, the cost to the federal government of processing a Form BD-N filing for purposes of Rule 15b11-1 is negligible.

¹⁴ This figure (\$344/hour) is from the salary given for a Compliance Manager in the Securities Industry and Financial Markets Association's *Report on Management & Professional Earnings in the Securities Industry 2013*, modified by Commission staff to account for an 1,800-hour work year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

¹⁵ (3 total annual burden hours x \$344 per hour) = \$1,032 total annual cost.

15. Changes in Burden

The total annual reporting burden associated with Rule 15b11-1 and Form BD-N increased by approximately one hour because the estimated number of amendments filed on Form BD-N rose from three to eleven while the estimated number of initial filings fell from two to zero. In 2019, Commission staff estimated that the total annual reporting burden associated with Form BD-N and Form BD-N amendments was approximately two burden hours. Currently, in 2022, Commission staff estimates that the total annual reporting burden associated with Rule 15b11-1 and Form BD-N is approximately three burden hours. As the estimated average number of initial applications filed on Form BD-N fell to zero annually, and the estimated average annual number of amendments filed on Form BD-N increased from three to eleven since the last filing with OMB, Commission staff estimates that the total annual reporting burden associated with Rule 15b11-1 and Form BD-N has increased from approximately two burden hours to approximately three burden hours, for an increase in burden of approximately one hour.¹⁶

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.

¹⁶ In 2019, Commission staff estimated that the total annual reporting burden was approximately two burden hours (1 hour for 2 initial applications + 1 hour for 3 amendments) = 2 hours for 5 responses. In 2022, Commission staff estimates that the total annual reporting burden is approximately three burden hours (0 hours for 0 initial applications + 3 hours for 11 amendments) = 3 hours for 11 responses. The one-hour increase in the estimated total annual reporting burden is the difference between the 2019 estimate of 2 hours and the 2022 estimate of 3 hours (3 hours - 2 hours) = 1 more hour.