

SUPPORTING STATEMENT for the Paperwork Reduction Act Information Collection
Submission for Rule 10B-1– Reporting of Security-Based Swap Positions
New Information Collection Request

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

A. JUSTIFICATION

1. Necessity of Information Collection

Section 10B of the Exchange Act provides the Commission with authority to establish position limits for security-based swaps and with rulemaking authority to require reporting of large security-based swap positions.¹ As discussed below, the Commission’s current observations of the security-based swap market suggest a number of potential benefits of requiring reporting of large security-based swap positions.² Accordingly, on December 15, 2021, the Commission proposed Rule 10B-1 that would require any person (and any entity controlling, controlled by or under common control with such person), or group of persons, who through any contract, arrangement, understanding or relationship, after acquiring or selling directly or indirectly, any security-based swap, is directly or indirectly the owner or seller of a security-based swap position that exceeds a specified mount, to promptly file with the Commission a statement containing the information required by proposed 17 CFR 240.10B-101 (“proposed Schedule 10B”) on the Commission’s Electronic Data Gathering, Analysis, and Retrieval system (“EDGAR”).³ These reports would be made publicly available immediately upon filing.

Specifically, proposed Rule 10B-1 (including proposed Schedule 10B) would impose new collection of information requirements.⁴ The title of the new collections of information is “Schedule 10B – Reporting of Security-Based Swap Positions.”

¹ See 15 U.S.C. 78j-2.

² See Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition on Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions, Exchange Act Release No. 93784 (Dec. 15, 2021), 87 FR 6652 (Feb. 4, 2022) (“SBS Anti-Fraud and Large Position Reporting Proposing Release”).

³ See SBS Anti-Fraud and Large Position Reporting Proposing Release, 87 FR 6652.

⁴ The Commission does not believe that the other Exchange Act rules proposed in SBS Anti-Fraud and Large Position Reporting Proposing Release (re-proposed Rule 9j-1 and proposed Rule 15Fh-4(c)) contain a collection of information requirement within the meaning of the PRA. Specifically, re-proposed Rule 9j-1 contains prohibitions designed to prevent fraud, manipulation, and deception in connection with effecting transactions in, or inducing or attempting to induce the purchase or sale of, any security-based swap. Proposed Rule 15Fh-4(c) would generally make it unlawful for certain specified persons to directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence a security-based swap dealer or major security-based swap participants’ chief compliance officer in the performance of their duties under the federal securities laws or the rules and regulations thereunder. Neither of those rules require a person to establish, maintain, and enforce written policies and procedures reasonably designed to ensure compliance with the applicable rule. However, to the extent that a person is already

2. Purpose and Use of the Information Collection

The information required to be disclosed on proposed Schedule 10B should play an important role in providing transparency in the security-based swap market and informing of the attendant risks of large security-based swap positions. More specifically, the information collection will be used as follows: (1) to provide market participants (including counterparties, issuers and their stakeholders) and regulators with access to information that may indicate that a person (or a group of persons) is building up a large security-based swap position, which in some cases could be indicative of potentially fraudulent or manipulative purposes; (2) to alert market participants and regulators to the existence of concentrated exposures to a limited number of counterparties, which should inform those market participants and regulators of the attendant risks, allow counterparties to risk manage and lead to better pricing of the security-based swaps (as a result of all market participants having access to the information about the positions), and (3) in the case of manufactured or other opportunistic strategies in the CDS market, to provide market participants and regulators with advance notice that a person (or a group of persons) is building up a large CDS position with an incentive to vote against their interests as a debt holder, possibly with an intent to harm the company, even if such conduct is not inherently fraudulent.

3. Consideration Given to Improved Information Technology

To facilitate analysis of the reports submitted on proposed Schedule 10B via EDGAR, the Commission is proposing to require filers to submit proposed Schedule 10B using a structured, machine-readable data language. In particular, the Commission is proposing that proposed Schedule 10B be structured using Financial Information eXchange Markup Language (“FIXML”), a structured data language built on the open Financial Information eXchange (“FIX”) standard used by market participants to communicate information about securities transactions and markets to each other.⁵ The information and data disclosed in proposed Schedule 10B would be available via EDGAR in electronic “style sheets” developed by the Commission that, when applied to the reported FIXML data on proposed Schedule 10B, would represent that data in human-readable form.⁶

subject to a similar policies and procedures requirement, any updates to those policies and procedures would likely be captured by an existing collection of information. Both re-proposed Rule 9j-1 and proposed Rule 15Fh-4(c) are intended solely to identify actions that an SBS Entity is not permitted to take, and as such do not make substantive modifications to any existing collection of information or impose new information collection requirements within the meaning of the PRA.

⁵ FIXML and the underlying FIX communications protocol is maintained by the FIX Trading Community, a not-for-profit industry-driven standards-setting body. Current FIXML uses include derivatives post-trade clearing, settlement, and reporting. More information about FIXML and the FIX Trading Community is available at the “FIXML” and “FIX Trading Community” webpages on the FIX Trading website (available at: <https://www.fixtrading.org/standards/fixml/> and <https://www.fixtrading.org/overview/>).

⁶ See SBS Anti-Fraud and Large Position Reporting Proposing Release, 87 FR at 6675.

The Commission believes a FIXML requirement for proposed Schedule 10B will further the goal of increasing transparency in the security-based swaps market. Because the reports on proposed Schedule 10B would be publicly available in a machine-readable data language, the information disclosed by filing persons would be much more readily accessible and usable for extraction, filtering, comparison, threshold notification, and other analyses on a large scale by the public and the Commission.

To allow for flexibility in complying with this requirement, the Commission would provide filing persons with a fillable web form that would convert inputted reports into FIXML, allowing filers to, at their option, either submit proposed Schedule 10B directly in FIXML, or use the fillable web form to generate the proposed Schedule 10B in FIXML. In addition, the Commission would develop electronic “style sheets” that, when applied to the reported FIXML data on proposed Schedule 10B, would represent that data in human-readable form.

4. Duplication

The Commission recognizes that market participants are already subject to the requirements of Regulation SBSR,⁷ which governs regulatory reporting of security-based swap transactions to security-based swap data repositories (“SBSDRs”) and public dissemination of some of that transaction data pursuant to Section 13(m) of the Exchange Act. Although both proposed Rule 10B-1 (along with proposed Schedule 10B) and Regulation SBSR requirements are intended to provide greater transparency in the security-based swap market, certain differences highlight the need to propose Rule 10B-1. For example, pursuant to the statutory authority in Section 13(m)(1), Regulation SBSR requires real-time public reporting to SBSDRs and public dissemination of security-based swap transaction data but not of position data as is contemplated by Section 10B and proposed Rule 10B-1.⁸ Although registered SBSDRs are required to establish, maintain, and enforce written policies and procedures reasonably designed to calculate positions for all persons with open security-based swaps for which the SBSDR maintains records,⁹ they are not required to make those reports public.¹⁰ As a result, any public

⁷ See 17 CFR 242.900 through 242.909.

⁸ See, e.g., Section 13(m)(1)(C) of the Exchange Act, which provides that “[t]he Commission is authorized to provide by rule for the public availability of security-based swap transaction, volume, and pricing data” subject to certain conditions and requirements. 15 U.S.C. 78m(m)(1)(C).

⁹ See 17 CFR 240.13n-5(b)(2).

¹⁰ In fact, Section 13(m)(1)(C)(iii) of the Exchange Act provides that any Commission rulemaking pursuant to Section 13(m) (i.e., Regulation SBSR) “shall require real-time public reporting for [security-based swap] transactions, in a manner that does not disclose the business transactions and market positions of any person.” See 15 U.S.C. 78m(m)(1)(C)(iii). By contrast, Section 10B(d), which is titled “Large Trader Reporting,” does not contain a limitation on disclosing the identity of security-based swap counterparties in connection with security-based swap position reporting. However, a person subject to the reporting requirements of proposed Rule 10B-1 would have to report its own identity and the size of its aggregate security-based swap position, but the person would not be required to report any information about its counterparties, including their identities. See Part III of SBS Anti-Fraud and Large Position Reporting Proposing Release, 87 FR 6652.

position reporting pursuant to Regulation SBSR would need to be completely anonymous with respect to both the person building up large, concentrated security-based swap positions, and each of its counterparties. In contrast, the position data required by proposed Schedule 10B would require identification of the person building up the large security-based swap position along with the size of that person's position and a description of any related securities held by that person.¹¹ The disclosure of this data under proposed Schedule 10B, which is not required by Regulation SBSR, is necessary to support the purpose and use of this collection of information as described in section 2 above. Finally, Regulation SBSR only requires reporting and public dissemination of security-based swaps, in contrast to Section 10B, which authorizes the Commission to require reporting of positions in both security-based swaps and related securities.¹² The Commission believes that requiring reporting of related securities serves an important function in allowing both the Commission and the public to develop a greater understanding of the impact that a large security-based swap position can have on the broader securities markets.

5. Effects on Small Entities

The Commission does not believe that the parties that engage in security-based swap transactions would be "small entities" as defined in Exchange Act Rule 0-10.¹³ Feedback from industry participants about the security-based swap market indicates that only persons or entities with assets significantly in excess of \$5 million (or with annual receipts significantly in excess of \$7 million) participate in the security-based swap market. In addition, the Commission believes that the proposed reporting thresholds in proposed Rule 10B-1 are set sufficiently high as to further mitigate against the possibility of proposed Rule 10B-1 (including proposed Schedule 10B) applying to persons who would be considered "small entities" under Rule 0-10. Finally, the Commission invited commenters to address whether the proposed rules would have a significant economic impact on a substantial number of small entities, and, if so, what would be the nature of any impact on small entities.

6. Consequences of Not Conducting Collection

The collection of information is at the heart of requirements of proposed Rule 10B-1 and proposed Schedule 10B, such that not conducting the collection (or reducing the frequency of collection) would not be consistent with the intended effects of the proposal.

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

The proposed Schedule 10B requires reporting of large positions in security-based swaps and any amendments thereto. A respondent could be required to file multiple Schedules 10B if it has large positions in multiple security-based swaps – so more than quarterly. In addition,

¹¹ See SBS Anti-Fraud and Large Position Reporting Proposing Release, 87 FR at 6673.

¹² See 15 U.S.C. 78j-2(d).

¹³ See 17 CFR 240.0-10(a).

amendments may be filed more than quarterly if there are changes to the information. These multiple collections are necessary in order to provide regulators and market participants with current information with regard to a respondent's large security-based swap positions.

8. Consultations Outside the Agency

In December 2021, the Commission requested comment on the collection of information requirements in the SBS Anti-Fraud and Large Position Reporting Proposing Release.¹⁴ A copy of the applicable release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants and financial regulators through public conferences, meetings, and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission's public website, and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

9. Payment or Gift

No payment or gift is provided to respondents.

10. Confidentiality

Given the intended benefits of public reporting of the information required to be reported on proposed Schedule 10B pursuant to proposed Rule 10B-1, including transparency and market integrity, responses made pursuant to this collection of information would not be confidential and would be publicly available. The Commission understands that certain aspects of a security-based swap transaction may be sensitive or proprietary information. The intent of proposed Rule 10B-1 is to alert regulators and the market, including counterparties to security-based swap trades and the companies whose securities underlie security-based swaps, that one or more market participants are amassing a large position in security-based swaps. The collection of information is intended to achieve that objective without requiring market participants to publicly disclose sensitive or proprietary information about their security-based swap positions. In particular, proposed Schedule 10B does not require reporting persons to disclose any information about their counterparties, including their identities, to any security-based swap or other related derivatives; only the aggregated positions would need to be disclosed. Moreover, proposed Schedule 10B only requires reporting persons to include a "brief description" of any contracts, arrangements, understandings or relationships with respect to any security-based swaps included in the security-based swap position or any underlying or related securities (including security-based swaps) or loans required to be disclosed pursuant the form; the agreements themselves would not need to be disclosed. The Commission believes that structuring proposed Schedule 10B in such a manner would help to alleviate concerns regarding the potential public disclosure of sensitive or proprietary information, however, to the extent that

¹⁴ See SBS Anti-Fraud and Large Position Reporting Proposing Release, 87 FR at 6679.

the Commission receives confidential information pursuant to this collection of information that is otherwise not publicly available, including in connection with examinations or investigations, that information will be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 552, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)).

11. Sensitive Questions

The collection of information does not expressly include Personally Identifiable Information ("PII"). At the same time, however, Commission staff understands that there may be instances when certain information (including, but not limited to, a person's name, email, or phone number) could be provided by a respondent in response to the collection of information. However, Commission staff does not envision any circumstance in which a social security number would be provided pursuant to any of the collections of information. As such, we believe that the treatment of any PII with the collection of information associated with proposed Rule 10B-1 or proposed Schedule 10B 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. Proposed Rule 10B-1

Initial One-Time Burden

The Commission believes that up to 850 respondents will likely need to develop a technological infrastructure to calculate and monitor their security-based swap positions, even if some of those entities do not have at least one security-based swap position that is required to be reported pursuant to proposed Rule 10B-1(a). The Commission believes that most, if not all, persons who are likely to have security-based swap positions large enough to trigger the reporting thresholds will have the resources to develop and implement this technological infrastructure using internal personnel and resources. The Commission also believes that each respondent will incur a one-time initial internal burden of approximately 355 hours (or 118.33 hours on a three-year annualized basis) per respondent to develop such technological infrastructure.¹⁵ Accordingly, the Commission estimates that compliance with proposed Rule 10B-1 will impose an initial one-time burden of 355 hours (or 118.33 hours on a three-year annualized basis) for each of the estimated 850 entities expected to be impacted by the proposed rule, for an estimated initial one-time burden of approximately **100,580.50 hours** (on a three-year annualized basis) in the aggregate.

Ongoing Burden

¹⁵ This estimate is based on the following hours: Sr. Programmer (160 hours) + (Sr. Systems Analyst (160 hours) + Compliance Manager (10 hours) + Director of Compliance (5 hours) + Compliance Attorney (20 hours) = **355 hours**.

In addition to developing the technological infrastructure to calculate and monitor their security-based swap positions in order to comply with the requirements of proposed Rule 10B-1, each respondent will be required to maintain and operate such system on an ongoing basis. As before, the Commission believes that the persons who are likely to be subject to the rule will likely have the personnel and resources to maintain these systems internally. As such, the Commission estimates that each respondent will incur an annual on-going burden of 436 hours.¹⁶ Accordingly, the Commission estimates that compliance with proposed Rule 10B-1 will impose an annual ongoing burden of 436 hours for each of the estimated 850 entities expected to be impacted by the proposed rule, for an estimated annual ongoing burden of approximately **370,600 hours** in the aggregate.

B. Proposed Schedule 10B

The collection of information includes the filings required to be reported to the Commission on proposed Schedule 10B pursuant to Rule 10B-1. The Commission believes that persons that exceed the reporting thresholds in proposed Rule 10B-1(b)(1) will submit an estimated 1,000 reports per week. The estimated 1000 reports includes 500 reports related to security-based swap positions that are CDS¹⁷ and 500 reports related to security-based swaps based on equity securities or other debt securities.¹⁸ Accordingly, the Commission believes that it will receive 52,000 reports annually.¹⁹ In addition, the Commission estimates that 800 respondents will be subject to at least one reporting requirement pursuant to proposed Rule 10B-1.²⁰ This estimate results in an average of 65 reports per respondent.

¹⁶ This estimate is based on the following hours: Sr. Programmer (32 hours) + Sr. Systems Analyst (32 hours) + Compliance Manager (60 hours) + Compliance Clerk (240 hours) + Director of Compliance (24 hours) + Compliance Attorney (48 hours) = **436 hours**.

¹⁷ See Part VI.D.2.iii(A) of SBS Anti-Fraud and Large Position Reporting Proposing Release, 87 FR 6652 (estimating that the Commission will receive approximately 362 reports related to security-based swap positions that are CDS from U.S. persons, and 291 reports related to security-based swap positions that are CDS from non-U.S. persons). We believe given that such range may be overestimating the number of reports on both ends of that spectrum and that it is reasonable to use an aggregate number of approximately 500 reports per week.

¹⁸ Because the Commission does not yet have the data necessary to make a similar estimate for security-based swaps based on equity securities or other debt securities, we are doubling the estimate provided for CDS positions, for a total of 1,000 reports per week. As explained in connection with estimating the number of respondents that will be required to submit reports pertaining to CDS positions, we believe that doubling the estimate related to CDS positions is reasonable given what we know about the composition of the security-based swap market.

¹⁹ This estimate is based on the following: (1,000 reports/week) × (52 weeks) = 52,000 reports. In addition, the Commission previously estimated that 800 respondents will be subject to at least one reporting requirement pursuant to proposed Rule 10B-1. See Part V.C. of SBS Anti-Fraud and Large Position Reporting Proposing Release, 87 FR 6652. This estimate results in an average of 65 reports per respondent.

²⁰ See Part V.C. of SBS Anti-Fraud and Large Position Reporting Proposing Release, 87 FR 6652.

The Commission also estimates that each of those estimated 52,000 reports will take approximately 14.5 hours to complete. This number is consistent with the estimate used in the collection of information for Schedule 13D.²¹ Although the Commission recognizes that proposed Rule 10B-1 and Regulation 13D-G differ in terms of both purpose and scope, we believe that the process of completing both forms would be similar. The Commission does not believe that respondents will incur any initial one-time burden related to proposed Schedule 10B. Accordingly, the Commission estimates that the 800 respondents will incur an annual burden of **754,000 hours** in the aggregate to complete these 52,000 reports on proposed Schedule 10B.

Combining the initial and annual burdens associated with both proposed Rule 10B-1 and proposed Schedule 10B results in an estimated **total annual industry burden of 1,225,180.50 hours** in the aggregate for respondents.

Summary of Hourly Burden								
Name of Information Collection	Number of Entities Impacted	Small Business Entities Affected	Type of Burden	Ongoing or Initial Burden	Annual Responses per Entity	Burden per Entity per Response	Annual Burden per Entity	Annual Industry Burden
Proposed Rule 10B-1	850	0	Recordkeeping	Initial One-Time	N/A	355.00	118.33	100,580.50
Proposed Rule 10B-1	850	0	Recordkeeping	Ongoing	1	436.00	436.00	370,600.00
Proposed Schedule 10B	800	0	Reporting	Initial One-Time	N/A	N/A	N/A	00.00
Proposed Schedule 10B	800	0	Reporting	Ongoing	65	14.50	942.50	754,000.00
TOTAL ANNUAL INDUSTRY BURDEN								1,225,180.50

13. Costs to Respondents

In addition to the costs associated with the burden of information collection discussed in Item 12 above, the Commission also believes that each respondent will incur a \$1,000 annual internal cost for the technology necessary to store such security-based swap position data to satisfy the recordkeeping requirements of proposed Rule 10B-1, or **\$850,000 in the aggregate** for all 850 respondents.²² The Commission does not believe that proposed Schedule 10B would impose any additional costs on the respondents.

²¹ See Proposed Collection; Comment Request; Extension: Regulation 13D and Regulation 13G, Schedule 13D and Schedule 13G; SEC File No. 270-137, 85 FR 25503 (May 1, 2020). The Commission recognizes that the 14.5 hour estimate for Schedule 13D is subsequently broken down based on the proportion of hours that would be carried internally by each respondent (25%), such that the other 75% would be carried by outside counsel (which was then monetized for purposes of the estimated burden). Because the Commission does not yet know what proportion of proposed Schedule 10B filings would be prepared externally, these estimates all assume that the entire 14.5 hour burden would be carried as internal costs by each respondent.

²² This estimate is based on the following cost estimates: [(\$250/gigabyte of storage capacity) × (4 gigabytes of storage)] = \$1,000 x 850 respondents = **\$850,000**.

Summary of Dollar Costs								
Name of Information Collection	Number of Entities Impacted	Small Business Entities Affected	Type of Burden	Ongoing or Initial Burden	Annual Responses per Entity	Cost per Entity per Response	Annual Cost per Entity	Annual Industry Cost
Proposed Rule 10B-1	850	0	Recordkeeping	Ongoing	1	\$1,000.00	\$1,000.00	\$850,000.00
Proposed Rule 10B-1	850	0	Recordkeeping	Initial One-Time	N/A	N/A	N/A	\$0.00
Proposed Schedule 10B	800	0	Reporting	Ongoing	65	\$0.00	\$0.00	\$0.00
Proposed Schedule 10B	800	0	Reporting	Initial One-Time	N/A	N/A	N/A	\$0.00
TOTAL COST FOR ALL RESPONDENTS								\$850,000.00

14. Cost to Federal Government

The federal government will not incur any costs for this collection beyond normal full-time employee labor costs, nor does the rule require the Commission to hire any new employees or reallocate existing employees to ensure compliance with the rule.

15. Changes in Burden

Not applicable. This is the initial submission of these estimated burdens.

16. Information Collection Planned for Statistical Purposes

Not applicable. The information collection is not used for statistical purposes.

17. OMB Expiration Date Display Approval

The Commission is not seeking approval to not display the OMB approval expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.