

**SUPPORTING STATEMENT  
for the Paperwork Reduction Act Information Collection Submission for  
Rule 3a71-3 Security-Based Swap Dealer De Minimis Counting Exception for Certain  
Transactions Arranged, Negotiated or Executed in the United States**

**OMB Control No. 3235-0771  
Proposed Partial 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**

Rule 3a71-3 under the Securities Exchange Act of 1934 (“Exchange Act”) provides in part that, for purposes of determining whether they can avail themselves of the de minimis exception to the “security-based swap dealer” definition, non-U.S. persons must count certain dealing transactions with non-U.S. counterparties that have been “arranged, negotiated, or executed” by personnel in the United States.

The Commission adopted Rule 3a71-3(d)<sup>1</sup> to provide an exception from that “arranged, negotiated, or executed” counting requirement. There are collections of information associated with the following conditions to the exception, all of which are intended to help protect the policy goals associated with security-based swap dealer regulation:

- A condition requiring a registered entity<sup>2</sup> affiliated with the non-U.S. person relying on the exception (“relying entity”) to disclose the limited applicability of Title VII in connection with the transactions at issue.
- A condition requiring the registered entity to comply with the following types of security-based swap dealer requirements “as if” it were a counterparty to the transactions at issue: (i) certain business conduct requirements; and (ii) trade acknowledgment and verification requirements.
- A condition requiring the registered entity to obtain from its non-U.S. affiliate, and maintain for not less than three years following the “arranging, negotiating, or executing” activity pursuant to the exception, the first two years in an easily accessible place, trading relationship documentation regarding the non-U.S. affiliate and its counterparty.
- A condition requiring the registered entity to obtain from its non-U.S. affiliate, and maintain for not less than three years following the “arranging, negotiating, or executing” activity pursuant to the exception, the first two years in an easily accessible place, consent to service of process.

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<sup>1</sup> See Exchange Act Release No. 34-87780 (December 18, 2019).

<sup>2</sup> That entity may be registered either as a security-based swap dealer or as a broker.

- A condition requiring the relying entity to be subject to the margin and capital requirements of a “listed jurisdiction” designated by the Commission.
- A condition requiring the registered entity to obtain from its non-U.S. affiliate, and maintain for not less than three years following the “arranging, negotiating, or executing” activity pursuant to the exception, the first two years in an easily accessible place, documentation regarding the non-U.S. affiliate’s compliance with the limitations on the use of the exception for covered inter-dealer security-based swaps.
- A condition requiring the registered entity to file with the Commission a notice that its associated persons may conduct “arranging, negotiating, or executing” activity in the United States.
- A condition requiring the registered entity to establish internal risk management control systems in accordance with Rule 15c3-4.<sup>3</sup>

### **2023 Proposed Partial Revision to Collection of Information**

In March 2023, the Commission proposed amendments to the condition in Rule 3a71-3(d) requiring the registered entity to file with the Commission a notice that its associated persons may conduct “arranging, negotiating, or executing” activity in the United States.<sup>4</sup> Currently, Exchange Act Rule 3a71-3(d)(1)(vi) requires the registered entity to file the notice by submitting it to the electronic mailbox specified on the Commission’s website. The Commission proposed to amend the manner of filing to require the registered entity to file the notice electronically through the Commission’s EDGAR filing system. The Commission also proposed to require that, if the registered entity later becomes unregistered or otherwise ineligible to serve as the registered entity for purposes of the Rule 3a71-3(d) conditional exception, the registered entity must promptly withdraw its notice. In addition, a registered entity whose associated persons will no longer conduct “arranging, negotiating, or executing” activity pursuant to the conditional exception may withdraw its notice. The Commission proposed to require registered entities to file any withdrawal of the notice electronically through the Commission’s EDGAR filing system. This Supporting Statement addresses revisions to the currently approved burdens of information collection in OMB Control No. 3235-0771 only as a result of those proposed amendments to Rule 3a71-3(d).

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<sup>3</sup> Because Rule 3a71-3 requires the use of either a registered security-based swap dealer or a registered broker in connection with the transactions at issue, Rule 3a71-3 also implicates collections of information associated with security-based swap dealer or broker status (apart from the collections associated with the specific conditions of the exception). Separate collections of information address the registration of security-based swap dealers and brokers, as well as the requirements associated with those registered entities as a matter of course, including recordkeeping requirements applicable to such registered entities. The separate collections of information associated with requirements of general applicability for registered security-based swap dealers and brokers are not addressed here, but instead form part of the collections of information associated with those separate requirements.

<sup>4</sup> See *Electronic Submission of Certain Material Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report*, Release No. 33-11176 (Mar. 22, 2023), 88 FR 23920 (Apr. 18, 2023) (“2023 Electronic Submission Proposal”), section V.B.

## 2. Purpose and Use of Information Collection

Disclosure of limited Title VII applicability – The condition requiring disclosure of this information is intended to help guard against the non-U.S. counterparties to the transactions at issue reasonably presuming that the involvement of U.S. personnel in an arranging, negotiating or executing capacity as part of the transaction would be accompanied by the safeguards associated with Title VII security-based swap dealer regulation applying to the non-U.S. person.

Business conduct condition – The condition requiring the registered entity’s “as if” compliance with security-based swap dealer requirements for the disclosure of risks, characteristics, incentives and conflicts is intended to assist the counterparty in assessing the transaction by providing it with a better understanding of the expected performance of the security-based swap, and provide additional transparency and insight into pricing. The condition requiring the registered entity’s “as if” compliance with security-based swap dealer requirements regarding the suitability of recommendations is intended to assist the registered entity in making appropriate recommendations. The condition requiring the registered entity’s “as if” compliance with security-based swap dealer requirements regarding fair and balanced communications is intended to better equip the counterparty to make more informed investment decisions.

Trade acknowledgment and verification condition – The condition requiring the registered entity’s “as if” compliance with security-based swap dealer trade acknowledgment and verification requirements is intended to provide a written record by which the counterparties to the transaction may memorialize the terms of a transaction, and ensure that this written record accurately reflects the terms of the transaction as understood by the respective counterparties.

Trading relationship documentation condition – The condition requiring the registered entity to obtain and maintain trading relationship documentation involving the relying entity and its counterparty is intended to help the Commission obtain a full view of the associated dealing activities, to avoid impediments to the Commission’s ability to identify fraud and abuse in connection with those transactions.

Consent to service condition – The condition requiring the registered entity to obtain consent to service of process from its non-U.S. affiliate relying on the exception it intended to assist the Commission in efficiently taking action to address potential violations of the federal securities laws in connection with the transactions at issue.

“Listed jurisdiction” condition – The use of information provided by applicants in connection with “listed jurisdiction” applications is to assist the Commission in evaluating the effectiveness of the financial responsibility requirements of jurisdictions regulating non-U.S. persons taking advantage of the exception, to help avoid creating an incentive for persons engaged in a security-based swap dealing business in the United States to book their transactions into entities that solely are subject to the regulation of jurisdictions that do not effectively require security-based swap dealers or comparable entities to meet certain financial responsibility standards, and accordingly to help avoid providing an unwarranted competitive advantage to non-U.S. persons that conduct security-based swap dealing activity in the United States without being subject to strong financial responsibility standards. The condition also is consistent with the view that applying financial responsibility requirements to the transactions at issue can help mitigate the potential for financial contagion to spread to U.S. market participants and to the U.S. financial system more generally.

Covered inter-dealer and notice conditions – The use of information provided by applicants in connection with the notice and compliance documentation requirements associated with the use of the conditional exception for covered inter-dealer security-based swaps is to assist the Commission in evaluating compliance with the limitations on such use of the exception. The information provided by the registered entity in the notice that its associated persons may conduct “arranging, negotiating, or executing” activity in the United States, and any subsequent withdrawal, also assists relying entities and their affiliates in determining whether they have satisfied the conditional exception’s notice requirement and in monitoring their progress toward the conditional exception’s cap on inter-dealer security-based swaps. The proposed amendment in the 2023 Electronic Submission Proposal to move the filing of the notice, and any subsequent withdrawal, to the Commission’s EDGAR filing system would facilitate more efficient and timely transmission, dissemination, and analysis of this information.

Risk management control systems condition – Compliance with Rule 15c3-4 by the registered entity engaged in arranging, negotiating, or executing activity in the United States is intended to promote the establishment and maintenance of effective risk management control systems by such entities.

### 3. Consideration Given to Information Technology

Disclosure of limited Title VII applicability – The condition requiring the registered entity to disclose the limited applicability of Title VII to the transactions at issue specifies that the registered entity provide this information contemporaneously with, and in the same manner as, the underlying arranging, negotiating or executing activity at issue to promote disclosure that would be useful for the counterparty.

Business conduct condition – The underlying security-based swap dealer business conduct requirements that are subject to “as if” compliance by the registered entity – relating to (i) disclosure of risks, characteristics, incentives and conflicts; (ii) suitability; and (iii) fair and balanced communications – do not prescribe particular forms or methods of compliance in connection with the collections of information so as to allow flexibility with respect to new technologies as they develop.

Trade acknowledgement and verification condition – The underlying security-based swap dealer trade acknowledgment and verification requirement that is subject to “as if” compliance by the registered entity requires that trade acknowledgments be provided electronically, and also permits security-based swap dealers to rely on the services of a third party to provide electronic acknowledgments on its behalf.

Trading relationship documentation and consent to service of process – The condition requiring the registered entity to obtain from its non-U.S. affiliate, and maintain, copies of trading relationship documentation and a consent to service of process, would implicate underlying security-based swap dealer books and records requirements. Those underlying requirements provide for the use of electronic storage in a non-rewritable, non-erasable format.

Listed jurisdiction condition – Applications for “listed jurisdiction” status – in connection with the condition requiring the relying entity must be subject to the margin and capital requirements of a listed jurisdiction – must be filed with the Commission consistent with Exchange Act rule 0-13. Rule 0-13 provides for the electronic submissions of applications.

Covered inter-dealer and notice conditions – The registered entity must obtain from its non-U.S. affiliate, and maintain, copies of compliance documentation, which would implicate underlying security-based swap dealer books and records requirements. Those underlying requirements provide for the use of an electronic recordkeeping system. A notice filed with the Commission associated with the use of the conditional exception currently must be submitted by the registered entity to the electronic mailbox described on the Commission’s website at [www.sec.gov](http://www.sec.gov) at the “ANE Exception Notices” section. The proposed amendment to Rule 3a71-3(d) in the 2023 Electronic Submission Proposal would move the filing of the notice, and any subsequent withdrawal, to the Commission’s EDGAR filing system.

Risk management control systems condition – This condition does not prescribe particular forms or methods of compliance in connection with the collections of information so as to allow flexibility with respect to new technologies as they develop.

#### **4. Duplication**

The conditions do not impose any duplicative conditions on registered entities or the relying entity. In this regard, we note that the collections at issue are connected with an exception from a portion of the “security-based swap dealer” definition that effectively would require certain non-U.S. persons count their security-based swap dealing transactions against the applicable de minimis thresholds. As a result, certain of the collections associated with the conditions – *i.e.*, “as if” compliance with business conduct, trade acknowledgment requirements – in practice would substitute for collections of information that the relying entity otherwise may incur in connection with the counting requirement.

#### **5. Effect on Small Entities**

The staff believes that none of the entities that may be subject to the conditions of the exception are small entities. Rule 3a71-3 accordingly would impose no burden on small entities.

#### **6. Consequences of Not Conducting Collection**

The information is collected on a transaction basis or upfront as warranted, and therefore there is no way to omit the information collection requirements or require less frequent collection without undermining the purposes of the exception.

#### **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 has issued a release soliciting comment on the partial revision to the collection of information requirements when the amendments were proposed in March 2023. A copy of the 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 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

Not applicable.

## 10. Confidentiality

Disclosures required by the conditions of the exception would be provided to the non-U.S. counterparties of the relying entity; therefore, the Commission would not typically receive confidential information as a result of this collection of information. To the extent that the Commission receives records related to such disclosures from a registered entity through the Commission’s examination and oversight program, or through an investigation, or some other means, such information would be kept confidential, subject to the provisions of applicable law. Any applications for listed jurisdiction status would be made public.

The information collected pursuant to the notice that a registered entity’s associated persons may conduct “arranging, negotiating, or executing” activity in the United States is public information. The proposed amendment to Rule 3a71-3(d) in the 2023 Electronic Submission Proposal provides that such notices and withdrawals shall be publicly disseminated through the Commission’s EDGAR system.

## 11. Sensitive Questions

The collection of information may include Personally Identifiable Information (“PII”)<sup>5</sup> in that it may include business contact information of a person or department. The proposed amendment to Rule 3a71-3(d) in the 2023 Electronic Submission Proposal is covered by the EDGAR PIA (3/22/23)<sup>6</sup> and SORN SEC-03: SEC’s Division of Trading and Markets Records.<sup>7</sup>

## 12. Information Collection Burden

The staff continues to estimate that up to 24 entities may seek to rely on the exception to the de minimis counting requirement of Rule 3a71-3. In connection with the conditions to the exception, each of those up to 24 entities would make use of an affiliated registered security-based swap dealer or registered broker. In general, the registered entity would be required to comply with the collections of information. Applications for “listed jurisdiction” status may be submitted by the up to 24 relying entities, but the staff believes that the greater portion of such applications will be submitted by foreign financial authorities.

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<sup>5</sup> 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.

<sup>6</sup> See <https://www.sec.gov/about/privacy/pia/pia-edgar.pdf>.

<sup>7</sup> 85 FR 85440 and 83 FR 6892. See [https://www.sec.gov/about/privacy/sorn/sec-03\\_sec\\_division\\_of\\_trading\\_and\\_markets\\_records.pdf](https://www.sec.gov/about/privacy/sorn/sec-03_sec_division_of_trading_and_markets_records.pdf).

## Currently Approved Burdens

The estimated hourly burdens that are currently approved for this collection total 235,243 hours per year, which are summarized in the following chart and described in more detail below:

Summary of Hourly Burdens										
Name of Information Collection	Type of Burden	A. Number of Entities Impacted	B. Annual Responses per Entity	C. Initial Burden per Entity per Response	D. Initial Burden Annualized per Entity per Response	E. Ongoing Burden per Entity per Response	F. Annual Burden Per Entity per Response	G. Total Annual Burden Per Entity	Total Industry Burden	Small Business Entities Affected
					[C ÷ 3 years]		[ D + E]	[F * B]	[G * A]	[A * 0%]
<u>Title VII Disclosure Requirement (Group A)</u>	Third-Party	12	12,609	0.00	0.00	0.08	0.08	1,050.08	12,609	0
<u>Title VII Disclosure Requirement (Group B)</u>	Third-Party	2	20,128	0.00	0.00	0.08	0.08	1,677.30	3,355	0
<u>Title VII Disclosure Requirement (Group C)</u>	Third-Party	10	422	0.00	0.00	0.08	0.08	35.20	352	0
<u>Title VII Disclosure Policies/procedures</u>	Recordkeeping	24	1	100.00	33.33	0.00	33.33	33.33	800	0
<u>Transaction disclosures Framework develop.</u>	Recordkeeping	24	1	1,200.00	400.00	120.00	520.00	520.00	12,480	0
<u>Transaction disclosures System develop/maint.</u>	Recordkeeping	24	1	8,000.00	2,666.67	4,000.00	6,666.67	6,666.67	160,000	0
<u>Suitability Swap market CPs</u>	Recordkeeping	1,116	1	1.00	0.33	0.00	0.33	0.33	372	0
<u>Suitability Other CPs</u>	Recordkeeping	498	1	2.50	0.83	0.00	0.83	0.83	415	0
<u>Fair/balanced commun. Internal review</u>	Recordkeeping	24	1	6.00	2.00	0.00	2.00	2.00	48	0
<u>Trade Acknowledgment Requirement</u>	Third-Party	24	3,152	0.11	0.04	0.14	0.18	554.33	13,304	0
<u>Trade Acknowledgment Policies/procedures</u>	Recordkeeping	24	1	80.00	26.67	40.00	66.67	66.67	1,600	0
<u>Trade relat. document. Policies/procedures</u>	Recordkeeping	24	1	20.00	6.67	0.00	6.67	6.67	160	0
<u>Trade relat. document. ID and conveyance</u>	Recordkeeping	24	1	0.00	0.00	104.00	104.00	104.00	2,496	0
<u>Trade relat. document. Receipt/maintenance</u>	Recordkeeping	24	1	0.00	0.00	52.00	52.00	52.00	1,248	0
<u>Consent to service Drafting/transfer</u>	Recordkeeping	24	1	2.00	0.67	0.00	0.67	0.67	16	0
<u>Listed jurisdiction Application</u>	Reporting	3	1	80.00	26.67	0.00	26.67	26.67	80	0
<u>Notice of ANE activity</u>	Reporting	24	1	0.50	0.17	0.00	0.17	0.17	4	0
<u>Inter-dealer Compl. Policies/Procedures</u>	Recordkeeping	24	1	20.00	6.67	0.00	6.67	6.67	160	0
<u>Inter-dealer Compl. ID and conveyance</u>	Recordkeeping	24	1	0.00	0.00	104.00	104.00	104.00	2,496	0
<u>Inter-dealer Compl. Receipt/maintenance</u>	Recordkeeping	24	1	0.00	0.00	52.00	52.00	52.00	1,248	0
<u>Risk Mgmt Control Policies/procedures</u>	Recordkeeping	24	1	2,000.00	666.66	0.00	666.66	666.66	16,000	0
<u>Risk Mgmt Control Maintenance/review</u>	Recordkeeping	24	1	0	0	250	250	250	6,000	0
<b>TOTAL HOURLY BURDEN FOR ALL RESPONDENTS</b>									<b>235,243</b>	

### Disclosure of limited Title VII applicability

The staff believes that three categories of non-U.S. persons may seek to take advantage of the exception:

*Group A* – Twelve U.S. entities may book transactions into non-U.S. affiliates to take advantage of the exception. In the aggregate the staff estimated that those twelve entities will provide a total of 151,308 annual disclosures,<sup>8</sup> or 12,609 average annual disclosures per entity. Based on our belief that the requisite disclosures will take no more than five minutes each, the staff estimated that in the aggregate those disclosures will amount to 1,050.75 hours<sup>9</sup> annually for each of the twelve members of the group, or 12,609 hours annually in the aggregate.

*Group B* – Two non-U.S. entities may fall below the applicable de minimis thresholds as a result of the exception. In the aggregate the staff estimated that registered affiliates of those two entities will provide a total of 40,256 annual disclosures,<sup>10</sup> or 20,128 average annual disclosures per entity. Based on our belief that the requisite disclosures will take no more than five minutes each, the staff estimated that it will take an average of 1,667.3 hours<sup>11</sup> annually for members of the group to provide the disclosures, or 3,355 hours annually in the aggregate.

*Group C* – Ten non-U.S. entities may use the exception to help avoid incurring costs that otherwise would be required to assess compliance with the de minimis counting rule. In the aggregate the staff estimated that registered affiliates of those ten entities will provide a total of 4,224 annual disclosures,<sup>12</sup> or 422 average annual disclosures per entity. Based on our belief that the requisite disclosures will take no more than five minutes each, the staff estimated that it will take an average of 35.2 hours<sup>13</sup> annually for members of the group to provide the disclosures, or 352 hours annually in the aggregate.

The staff believed that each of the 24 total registered entities would initially be required to spend 100 hours to help ensure that appropriate disclosures are provided, with a total aggregate

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<sup>8</sup> The estimate of 151,308 annual disclosures reflects data that indicated that there are six relevant U.S. entities that in the aggregate annually engage in 37,827 annual transactions. That amount was doubled to address growth in the market and data-related uncertainty, and doubled again to account for disclosures that do not result in a transaction.

<sup>9</sup> 12,609 disclosures × five minutes per disclosures = 1,050.75 hours.

<sup>10</sup> The estimate of 40,256 annual disclosures reflects data that indicated that there is one relevant non-U.S. entity that engages in 10,064 annual transactions. That amount was doubled to address growth in the market and data-related uncertainty, and doubled again to account for disclosures that do not result in a transaction.

<sup>11</sup> 20,128 disclosures × five minutes per disclosures = 1,667.3 hours.

<sup>12</sup> The estimate of 4,224 annual disclosures reflects data that indicated that there are five relevant non-U.S. entities that in the aggregate annually engage in 1,056 annual transactions. That amount was doubled to address growth in the market and data-related uncertainty, and doubled again to account for disclosures that do not result in a transaction.

<sup>13</sup> 422.4 disclosures × five minutes per disclosures = 35.2 hours.

initial burden of 2,400 hours. **The staff estimated that this will result in an annual burden of 33.33 hours per entity, or 800 hours annually in the aggregate.**<sup>14</sup>

Disclosure of risks, characteristics, incentives and conflicts

In connection with the requirement that the registered entity provide “as if” disclosure of risks, characteristics, incentives and conflicts of interest, the staff estimated that each of those registered 24 entities would incur an initial burden of 1,200 hours, or 28,800 hours in the aggregate, for developing the implementation framework. Each of those 24 registered entities further would incur an ongoing annual burden of 120 hours, or 2,880 hours in the aggregate, for re-evaluation and modification of the framework. **The staff estimated that this will result in an annual burden of 520 hours per entity, or 12,480 hours annually in the aggregate.**<sup>15</sup>

The staff further estimated that each of those 24 registered entities will incur an initial burden of 8,000 hours, or 192,000 hours in the aggregate, related to system development, programming and testing in connection with that requirement. Each of those 24 entities also will incur an ongoing annual burden of 4,000 hours, or 96,000 hours in the aggregate, for system maintenance. **The staff estimated that this will result in an annual burden of 6,666.67 hours per entity, or 160,000 hours annually in the aggregate.**<sup>16</sup>

Suitability of recommendations

In connection with the requirement that the registered entity comply with security-based swap dealer suitability requirements “as if” it were a counterparty to the transaction, the staff considered the burdens associated with the need of the registered entity to obtain representations from those counterparties so it may comply with the institutional suitability provisions of the suitability requirement. The suitability condition that the Commission adopted lessens the institutional counterparty suitability requirements, upon which this prior analysis was based, in connection with transactions subject to the exception.

The staff estimated that the 24 relying entities in the aggregate would have a total of 1,116 unique non-U.S. security-based swap counterparties that are also swap market participants, and 498 unique non-U.S. security-based swap counterparties that are not also swap market participants.<sup>17</sup> For the 1,116 counterparties that are also swap market participants, most of the

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<sup>14</sup> Annualized over three years, this initial burden would amount to an aggregate average of 800 hours per year (2,400 hours ÷ three years), and a per-entity average of approximately 33.3 hours (800 hours ÷ 24 entities).

<sup>15</sup> Annualized over three years, those initial and ongoing burdens would amount to an aggregate average of 12,480 hours per year (28,800 hours ÷ three years + 2,880 hours), and a per-entity average of 520 hours (12,480 hours ÷ 24 entities).

<sup>16</sup> Annualized over three years, those initial and ongoing burdens would amount to an aggregate average of 160,000 hours per year (192,000 hours ÷ three years + 96,000 hours), and a per-entity average of approximately 6,667 hours (160,000 hours ÷ 24 entities).

<sup>17</sup> Analysis of data indicated that the six U.S. entities engaged in security-based swap dealing activity above the de minimis thresholds in the aggregate had 161 unique non-U.S. counterparties that are swap market participants, and 70 unique non-U.S. counterparties that are not swap market participants. The one non-U.S. entity that may fall below the de minimis threshold due to the exception had 391 unique non-U.S. counterparties that are swap market participants, and 178 unique non-U.S. counterparties that are not swap market participants. The five additional non-U.S. persons that would be expected to incur assessment costs in connection with the “arranged, negotiated, or executed” counting standard in the aggregate had six unique non-U.S. counterparties

requisite representations already have been drafted, and each market participant would require one hour to assess the need for modifications and make any required modifications, amounting to an aggregate initial burden of 1,116 hours. The staff estimated that this will result in an annual burden of 0.33 hours per entity, or 372 hours annually in the aggregate.<sup>18</sup>

Each of the 498 counterparties that are not also swap market participants would require 2.5 hours to review and agree to the relevant representations, amounting to an aggregate initial burden of 1,245 hours. The staff estimated that this will result in an annual burden of 0.83 hours per entity, or 415 hours annually in the aggregate.<sup>19</sup>

#### Fair and balanced communications

In connection with the requirement that the registered entity comply with security-based swap dealer fair and balanced communications requirements “as if” it were a counterparty to the transactions at issue, the staff took the view that each of those 24 registered entities would incur an initial burden of six hours for internal review of certain communications, or an initial burden of 144 hours in the aggregate. The staff estimated that this will result in an annual burden of 2 hours per entity, or 48 hours annually in the aggregate.<sup>20</sup>

#### Trade acknowledgment and verification

In connection with the requirement that the registered entity comply with security-based swap dealer trade fair and balanced communications requirements “as if” it were a counterparty to the transactions at issue, the staff took the view that each of those 24 registered entities would engage in a total of 75,654 aggregate transactions annually, or an average of approximately 3,152 annual transactions per entity.

The staff further estimated that each of those 24 registered entities would incur 355 hours initially to develop an internal order and trade management system, or 8,520 hours in the aggregate. Each of those 24 registered entities also would incur 436 hours annually for day-to-day technical support as well as amortized annual burdens associated with system or platform updates, or 10,464 hours in the aggregate. The staff estimated that these initial and ongoing burdens will result in an annual burden of 554 hours per entity, or 13,304 annually in the aggregate.<sup>21</sup>

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that are swap market participants, and one unique non-U.S. counterparty that is not a swap market participant. Adding together those estimates and then doubling them (in light of the uncertainty associated with the estimate and to account for potential growth of the security-based swap market) produces a total estimate of 1,116 unique non-U.S. counterparties that are swap market participants, and 498 that are not.

<sup>18</sup> Annualized over three years, this initial burden would amount to an aggregate average of 372 hours per year (1,116 hours ÷ three years), and a per-counterparty average of approximately 0.33 hours (372 hours ÷ 1,116 counterparties).

<sup>19</sup> Annualized over three years, this initial burden would amount to an aggregate average of 415 hours per year (1,245 hours ÷ three years), and a per-counterparty average of approximately 0.83 hours (415 hours ÷ 498 counterparties).

<sup>20</sup> Annualized over three years, this initial burden would amount to an aggregate average of 48 hours per year (144 hours ÷ three years), and a per-entity average of two hours (48 hours ÷ 24 entities).

<sup>21</sup> Annualized over three years, those initial and ongoing burdens would amount to an aggregate average of 13,304 hours per year (8,520 hours ÷ three years + 10,464 hours), and a per-entity average of approximately 554 hours (13,304 hours ÷ 24 entities).

In addition, the staff estimated that each of those 24 registered entities would incur 80 hours initially for the preparation of written policies and procedures to obtain verification of transaction terms, or 1,920 hours in the aggregate. Each of those 24 registered entities would incur 40 hours annually to maintain those policies and procedures, or 960 hours in the aggregate. **The staff estimated that this will result in an annual burden of 66.7 hours per entity, or 1,600 hours annually in the aggregate.**<sup>22</sup>

Trading relationship documentation condition

In connection with the requirement that the registered entity obtain from its non-U.S. affiliate, and maintain, trading relationship documentation, the staff estimated that each of the 24 registered entities and their non-U.S. affiliates jointly would require 20 hours to develop policies and procedures, or 480 initial burden hours in the aggregate.<sup>23</sup> **The staff estimated that this will result in an annual burden of 6.67 hours per entity, or 160 hours annually in the aggregate.**

The staff also estimated that each non-U.S. entity would incur an average of 104 hours per year (two hours per week) to identify and electronically convey such records. **The staff estimated that this will result in an annual burden of 104 hours per entity, or 2,496 hours annually in the aggregate.**

The staff further estimated that each U.S. entity would incur an average of 52 hours per year (one hour per week) in connection with the receipt and maintenance of those records. **The staff estimated that this will result in an annual burden of 52 hours per entity, or 1,248 hours annually in the aggregate.**

Consent to service condition

In connection with the condition that the registered entity obtain consent to service of process from its non-U.S. affiliate, the staff estimated that each of the 24 registered entities and/or its non-U.S. affiliate jointly must initially expend 2 hours, or 48 hours in the aggregate in connection with the creation and transfer of those consents. **The staff estimated that this will result in an annual burden of 0.67 hours per entity, or 16 hours annually in the aggregate.**<sup>24</sup>

“Listed jurisdiction” condition

In connection with the “listed jurisdiction” condition, the staff estimated three relying entities would file a listed jurisdiction application (with the remainder of such applications being filed by foreign financial authorities). The staff further estimated that each of those three entities initially would incur 80 hours to prepare and submit those applications, for an aggregate initial

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<sup>22</sup> Annualized over three years, those initial and ongoing burdens would amount to an aggregate average of 1,600 hours per year (1,920 hours ÷ three years + 960 hours), and a per-entity average of approximately 66.7 hours (1,600 hours ÷ 24 entities).

<sup>23</sup> Annualized over three years, this initial burden would amount to an aggregate average of 160 hours per year (480 hours ÷ three years), and a per-entity average of approximately 6.67 hours (160 hours ÷ 24 entities).

<sup>24</sup> Annualized over three years, this initial burden would amount to an aggregate average of 16 hours per year (48 hours ÷ three years), and a per-entity average of approximately 0.67 hours (16 hours ÷ 24 entities).

burden of 240 hours. **The staff estimated that this will result in an annual burden of 26.67 hours per entity, or 80 hours annually in the aggregate.**<sup>25</sup>

Covered inter-dealer compliance documentation and notice conditions

In connection with the requirement that the registered entity obtain from its non-U.S. affiliate, and maintain, records confirming compliance with the covered inter-dealer threshold, the staff estimated that each of the 24 registered entities and their non-U.S. affiliates jointly would require 20 hours to develop policies and procedures, or 480 initial burden hours in the aggregate.<sup>26</sup> **The staff estimated that this will result in an annual burden of 6.67 hours per entity, or 160 hours annually in the aggregate.**

The staff also estimated that each non-U.S. entity would incur an average of 104 hours per year (two hours per week) to identify and electronically convey such records. **The staff estimated that this will result in an annual burden of 104 hours per entity, or 2,496 hours annually in the aggregate.**

The staff further estimated that each U.S. entity would incur an average of 52 hours per year (one hour per week) in connection with the receipt and maintenance of those records. **The staff estimated that this will result in an annual burden of 52 hours per entity, or 1,248 hours annually in the aggregate.**

In connection with the requirement that the registered entity file with the Commission a notice that its associated persons may conduct “arranging, negotiating, or executing” activity in the United States, the staff estimated that that each of the 24 registered entities would incur 0.5 hours to prepare and submit a notice, for an aggregate initial burden of 12 hours. **The staff estimated that this will result in an annual burden of 0.17 hours per entity, or 4 hours annually in the aggregate.**<sup>27</sup>

Risk management control systems condition

In connection with the requirement that the registered entity establish risk management control systems, the staff estimated that 24 registered entities will bear a one-time burden of 2,000 hours to initially set up risk management control systems, or 48,000 initial burden hours in the aggregate.<sup>28</sup> **The staff estimated that this will result in an annual burden of 666.67 hours per entity, or 16,000 hours annually in the aggregate.**

The staff further estimated that each U.S. entity would incur an average of 250 hours per year in connection with the review and maintenance of those systems. **The staff estimated that this will result in an annual burden of 250 hours per entity, or 6,000 hours annually in the aggregate.**

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<sup>25</sup> Annualized over three years, this initial burden would amount to an aggregate average of 80 hours per year (240 hours  $\div$  three years), and a per-entity average of approximately 26.7 hours (80 hours  $\div$  three entities).

<sup>26</sup> Annualized over three years, this initial burden would amount to an aggregate average of 160 hours per year (480 hours  $\div$  three years), and a per-entity average of approximately 6.7 hours (160 hours  $\div$  24 entities).

<sup>27</sup> Annualized over three years, this initial burden would amount to an aggregate average of 4 hours per year (12 hours  $\div$  three years), and a per-entity average of approximately 0.17 hours (4 hours  $\div$  24 entities).

<sup>28</sup> Annualized over three years, this initial burden would amount to an aggregate average of 16,000 hours per year (48,000 hours  $\div$  three years), and a per-entity average of approximately 666.67 hours (16,000 hours  $\div$  24 entities).

**These estimates result in a total estimated hourly burden of 235,243 per year.**

**2023 PARTIAL REVISION: New Burdens Associated with Proposed Amendments to Rule 3a71-3(d)**

This section describes the estimated burdens associated with the amendments to Rule 3a71-3(d) proposed in the 2023 Electronic Submission Proposal.<sup>29</sup>

**Notice of ANE Activity**

The 2023 Electronic Submission Proposal would change the manner that a registered entity files with the Commission the notice that its associated persons may conduct “arranging, negotiating, or executing” activity in the United States. The Commission does not expect the change from an email filing to an EDGAR filing will change the estimated burden. Therefore, the Commission continues to estimate that that each of the 24 registered entities would incur 0.5 hours to prepare and submit a notice, for an aggregate initial burden of 12 hours. The Commission estimates that this will result in an annual burden of 0.17 hours per entity, or 4 hours annually in the aggregate.<sup>30</sup>

The ability to withdraw the notice via EDGAR as proposed in **the 2023 Electronic Submission Proposal will result in an additional one-time burden.** The Commission estimates that withdrawing a notice electronically on EDGAR will incur the same burden as filing the initial notice electronically on EDGAR. As such, if each registered entity files one withdrawal of its notice, the Commission estimates that that each of the 24 registered entities would incur 0.5 hours to prepare and submit the withdrawal, for an aggregate initial burden of 12 hours. The Commission estimates that **this will result in an annual burden of 0.17 hours per entity, or 4 hours annually in the aggregate.**<sup>31</sup>

The chart below summarizes the estimated new burden associated with the proposed amendments to Rule 3a71-3 in the 2023 Electronic Submission Proposal:

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<sup>29</sup> See also OMB Control No. 3235-0328 regarding the burden associated with Form ID, which Form must be completed and filed with the Commission to seek access to file electronically on EDGAR.

<sup>30</sup> Annualized over three years, this initial burden would amount to an aggregate average of 4 hours per year (12 hours ÷ three years), and a per-entity average of approximately 0.17 hours (4 hours ÷ 24 entities).

<sup>31</sup> Annualized over three years, this initial burden would amount to an aggregate average of 4 hours per year (12 hours ÷ three years), and a per-entity average of approximately 0.17 hours (4 hours ÷ 24 entities).

Summary of Hourly Burdens										
		A.	B.	C.	D.	E.	F.	G.		
Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Initial Burden Annualized per Entity per Response	Ongoing Burden per Entity per Response	Annual Burden Per Entity per Response	Total Annual Burden Per Entity	Total Industry Burden	Small Business Entities Affected
					[C ÷ 3 years]		[D + E]	[F * B]	[G * A]	[A * 0%]
Withdrawal of notice of ANE activity	Reporting	24	1	0.50	0.17	0.00	0.17	0.17	4	0

**Total Industry Hour Burden:** The total industry hour burden attributable to Rule 3a71-3(d), as proposed to be amended, is estimated to be 235,243 hours plus the additional 4 hours resulting from the proposed amendments to Rule 3a71-3(d), **resulting in a total industry hour burden of 235,247 hours per year.**

### 13. Costs to Respondents

#### Current Cost Estimates

The staff estimated that Rule 3a71-3(d) would be associated with certain costs totaling \$1,242,595.00 per year, which are summarized in the following chart and described in more detail below:

Summary of Dollar Costs										
		A.	B.	C.	D.	E.	F.	G.		
Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Cost per Entity per Response	Initial Cost Annualized per Entity per Response	Ongoing Cost per Entity per Response	Annual Cost Per Entity per Response	Total Annual Cost Per Entity	Total Industry Cost	Small Business Entities Affected
					[C ÷ 3 years]		[D + E]	[F * B]	[G * A]	[A * 0%]
Title VII Disclosure Policies/procedures	Recordkeeping	24	1	\$35,341.00	\$11,780.33	\$0.00	\$11,780.33	\$11,780.33	\$282,728.00	0
Fair/balanced commun. Statement drafting	Recordkeeping	24	1	\$7,493.00	\$2,497.67	\$0.00	\$2,497.67	\$2,497.67	\$59,944.00	0
Fair/balanced commun. Legal costs	Recordkeeping	24	1	\$10,490.00	\$3,496.67	\$0.00	\$3,496.67	\$3,496.67	\$83,920.00	0
Listed jurisdiction Application	Reporting	3	1	\$99,903.00	\$33,301.00	\$0.00	\$33,301.00	\$33,301.00	\$99,903.00	0
Risk Mgmt Control information technology	Recordkeeping	24	1	\$18,480.00	\$6,160.00	\$0.00	\$6,160.00	\$6,160.00	\$147,840.00	0
Risk Mgmt Control ongoing maintenance	Recordkeeping	24	1	\$0.00	\$0.00	\$23,677.50	\$23,677.50	\$23,677.50	\$568,260.00	0
TOTAL COST FOR ALL RESPONDENTS									\$1,242,595.00	

#### Disclosure of limited Title VII applicability

In connection with the requirement for disclosure of limited Title VII applicability, the staff estimated that each of the 24 registered entities would incur an initial cost of \$35,341, for an

aggregate of \$848,184. **The staff estimated that this will result in an annual burden of \$11,780.33 per entity, or \$282,728 annually in the aggregate.**<sup>32</sup>

Fair and balanced communications

In connection with the requirement that the registered entity comply with security-based swap dealer fair and balanced communications requirements “as if” it were a counterparty to the transactions at issue, the staff estimated that each of those 24 registered entities would incur an initial \$7,493 in legal costs associated with the drafting or review of certain marketing materials, amounting to \$179,832 in the aggregate. **The staff estimated that this will result in an annual burden of \$2,497.67 per entity, or \$59,944 annually in the aggregate.**<sup>33</sup>

As part of that condition requiring fair and balanced communications, the staff also estimated that each of those 24 registered entities would incur an initial \$10,490 in legal costs associated with the drafting or review of certain marketing materials, amounting to \$251,760 in the aggregate. **The staff estimated that this will result in an annual burden of \$3,496.67 per entity, or \$83,920 annually in the aggregate.**<sup>34</sup>

“Listed jurisdiction” condition

In connection with the “listed jurisdiction” condition, the staff estimated that the three relying entities that would file a listed jurisdiction application each would incur an initial \$99,903 for the services of outside professionals, for an aggregate cost of \$299,712. **The staff estimated that this will result in an annual burden of \$33,301 per entity, or \$99,903 annually in the aggregate.**<sup>35</sup>

Risk management control systems condition

In connection with the requirement that the registered entity establish risk management control systems, a registered entity may need to incur start-up information technology external costs with respect to setting up a risk control management system. The staff estimated that a registered entity will incur an average of approximately \$18,480 for initial hardware and software expenses. **The staff estimated that the initial burden will result in an annual burden of \$6,160 per entity, or \$147,840 annually in the aggregate.**<sup>36</sup>

The staff also estimated that each registered entity would incur ongoing cost of approximately \$23,677.50 per registered entity. **The staff estimated that this will result in an annual burden of \$23,677.50 per entity, or \$568,260 annually in the aggregate.**

**These estimates result in a total estimated cost burden of \$1,242,595 per year.**

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<sup>32</sup> Annualized over three years, this initial cost would amount to an aggregate average of \$282,728 per year (\$848,184 ÷ three years), and a per-entity average of \$11,780.33 (\$282,728 ÷ 24 entities).

<sup>33</sup> Annualized over three years, this initial cost would amount to an aggregate average of \$59,944 per year (\$179,832 ÷ three years), and a per-entity average of \$2,497.67 (\$59,944 ÷ 24 entities).

<sup>34</sup> Annualized over three years, this initial cost would amount to an aggregate average of \$83,920 per year (\$251,760 ÷ three years), and a per-entity average of \$3,496.67 (\$83,920 ÷ 24 entities).

<sup>35</sup> Annualized over three years, this initial cost would amount to an aggregate average of \$99,903 per year (\$299,709 ÷ three years), and a per-entity average of approximately \$33,301 (\$99,903 ÷ three entities).

<sup>36</sup> Annualized over three years, this initial cost would amount to an aggregate average of \$147,840 per year (\$443,520 ÷ three years), and a per-entity average of approximately \$6,160 (\$147,840 ÷ 24 entities).

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The Commission estimates that there will be **no revised or new cost burdens** as a result of the proposed amendments to Rule 3a71-3(d) in the 2023 Electronic Submission Proposal.

### **14. Costs to Federal Government**

Not applicable.

### **15. Changes in Burden**

#### Notice of ANE Activity

The Commission is proposing to amend Rule 3a71-3(d) to change the manner that a registered entity is required to file with the Commission a notice that its associated persons may conduct “arranging, negotiating, or executing” activity in the United States.<sup>37</sup> The proposed amendment would require the registered entity to file the notice electronically through the Commission’s EDGAR filing system. The Commission also is proposing to clarify that, if the registered entity later becomes unregistered or otherwise ineligible to serve as a registered entity for purposes of the Rule 3a71-3(d) conditional exception, the registered entity must promptly withdraw its notice.<sup>38</sup> In addition, a registered entity whose associated persons will no longer conduct “arranging, negotiating, or executing” activity pursuant to the conditional exception may withdraw its notice. The Commission is proposing to require registrants to file any withdrawal of the notice electronically through the Commission’s EDGAR filing system.<sup>39</sup>

The Commission estimates that the proposed amendments to Rule 3a71-3(d) would add an annualized initial burden of 4 hours as summarized in the chart below:

Name of Information Collection	Annual Industry Burden	Annual Industry Burden Previously Reviewed	Change in Burden	Reason for Change
Withdrawal of notice of ANE activity	4 hours	0 hours	4 hours	Proposed amendment to Rule 3a71-3(d)

### **16. Information Collection Planned for Statistical Purpose**

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

### **17. Approval to Omit OMB Expiration Date**

The Commission has not prescribed a form that filers must use when they prepare Rule 3a71-3(d)(1)(vi) notices or withdrawals to be filed electronically using the Commission’s EDGAR filing system. However, if the Commission adopts the requirement to file the notices and withdrawals electronically using the EDGAR filing system as described in the 2023 Electronic Submission Proposal, we request authorization to omit the expiration date from the

<sup>37</sup> See section V.B of the 2023 Electronic Submission Proposal.

<sup>38</sup> See section V.B.2 of the 2023 Electronic Submission Proposal.

<sup>39</sup> *Id.*

EDGAR system, although the OMB control number will be displayed. Including the expiration date will result in increased costs, because the need to make changes to the system may not follow the application's scheduled version release dates.

**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.