SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants: OMB Control No. 3235-0732

Proposed Partial Revision 15fk-1

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

In 2010, Congress passed the Dodd-Frank Act, establishing a comprehensive framework for regulating the over-the-counter swaps markets. As required by Title VII of the Dodd-Frank Act, new section 15F(h) of the Exchange Act established business conduct standards for security-based swap ("SBS") Dealers and Major SBS Participants (collectively "SBS Entities") in their dealings with counterparties, including special entities, and in May 2016, the Commission adopted implementing rules.[1] The rules also establish regulations for the chief compliance officer functions within an SBS Entity.[2]

Rules 15fh-1 through 15fh-6 and 15fk-1[3] require SBS Entities to:

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[1] See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release 77617 (Apr. 14, 2016), 81 FR 29959 (May 13, 2016). See also Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants; Correction, Exchange Act Release 77617A (May 19, 2016), 81 FR 32643 (May 24, 2016). (together, "Adopting Release" or the "BCS Rules")

[2] Rules in addition to those addressed in this supporting statement were adopted under the BCS Rules. Commission staff has prepared separate supporting statements pursuant to the Paperwork Reduction Act ("PRA") regarding Rule 3a71-3(c) and Rule 3a71-6, which address the cross-border application of the business conduct standards and the availability of substituted compliance. The Office of Management and Budget ("OMB") has assigned control number 3235-0717 to Rule 3a71-3(c) and 3235-0715 to Rule 3a71-6. The remaining BCS Rules are either definitional rules, concern scope, or exempt respondents, see e.g. Rule 3a67-10, and do not have a PRA burden associated with them.

[3] The Commission's proposal also includes proposed amendments to CFR designations in order to ensure regulatory text conforms more consistently with section 2.13 of the Document Drafting Handbook. *See* Office of the Federal Register, Document Drafting Handbook (Aug. 2018 Edition, Revision 1.4, dated January 7, 2022), *available at* https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf. For rules proposed to be amended in this release that contain an uppercase letter in their CFR citations, the Commission is proposing to amend their CFR section designations to replace each such uppercase letter with the corresponding lowercase letter. For example, 17 CFR 240.15Fi-3 is proposed to be redesignated as 17 CFR 240.15fi-3, 17 CFR 240.15Fk-1 is proposed to be redesignated as 17 CFR 240.15fk-1, 17 CFR 240.15Aa-1 is proposed to be redesignated as 17 CFR 240.15aa-1, and 17 CFR 240.15Aj-1 is proposed to be redesignated as 17 CFR 240.15aa-2.

- Verify whether a counterparty is an eligible contract participant and whether it is a special entity;

- Disclose to the counterparty material information about the SBS, including material risks, characteristics, incentives and conflicts of interest;

- Provide the counterparty with information concerning the daily mark of the SBS;

- Provide the counterparty with information regarding the ability to require clearing of the SBS;

- Communicate with counterparties in a fair and balanced manner based on principles of fair dealing and good faith;

- Establish a supervisory and compliance infrastructure; and

- Designate a chief compliance officer that is required to fulfill the described duties and provide an annual compliance report.

The rules also require SBS Dealers to:

- Determine that recommendations they make regarding security-based swaps are suitable for their counterparties.

- Establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each known counterparty that are necessary to conduct business with such counterparty; and

- Comply with rules designed to prevent "pay-to-play."

The rules also define what it means to "act as an advisor" to a special entity, and require an SBS Dealer who acts as an advisor to a special entity to:

- Make a reasonable determination that any security-based swap or trading strategy involving a security-based swap recommended by the SBS Dealer is in the best interests of the special entity whose identity is known at a reasonably sufficient time prior to the execution of the transaction to permit the SBS Dealer to comply with this obligation; and

- Make reasonable efforts to obtain such information that the SBS Dealer considers necessary to make a reasonable determination that a security-based swap or trading strategy involving a security-based swap is in the best interests of the known special entity.

In addition, the rules require SBS Entities acting as counterparties to special entities to reasonably believe that the counterparty has an independent representative who meets the following requirements:

- Has sufficient knowledge to evaluate the transaction and risks;

- Is not subject to a statutory disqualification;
- Undertakes a duty to act in the best interests of the special entity;
- Makes appropriate and timely disclosures to the special entity of material information concerning the security-based swap;
- Evaluates, consistent with any guidelines provided by the special entity, the fair pricing and the appropriateness of the security-based swap;
- Is independent of the security-based swap dealer or major security-based swap participant that is the counterparty to a proposed security-based swap.

Under the rules, the special entity's independent representative must also be subject to pay-to-play regulations, and if the special entity is an ERISA plan, the independent representative must be an ERISA fiduciary.

The information that must be collected pursuant to the rules is intended to increase accountability and transparency in the market. The information will therefore help establish a framework that protects investors and promotes efficiency, competition and capital formation.

2023 Proposed Amendment

The Commission proposed amendments under the Exchange Act to require electronic submission on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR") as an Interactive Data File in accordance with Rule 405 of Regulation S-T (17 CFR 232.405), of the reports required to be submitted pursuant to Rule 15fk-1(c)(2)(ii)(A). The proposed amendments to Rule 15fk-1 would only change the format of the reports and would not change the information collection itself. The proposing release for these amendments was published in the Federal Register on April 18, 2023 (88 FR 23920).

2. Purpose and Use of Information Collection

i. Verification of Status

Rule 15fh-3(a)(1) requires an SBS Entity to determine whether its counterparty is an eligible contract participant ("ECP") before the execution of a security-based swap other than on a registered national securities exchange or security-based swap execution facility ("SEF"). An SBS Entity would use this information to comply with Section 6(l) of the Exchange Act (15 U.S.C. 78(f)(l)), which prohibits a person from entering into a security-based swap with a counterparty that is not an ECP other than on a national securities exchange.

Rule 15fh-3(a)(2) requires the SBS Entity to determine whether a counterparty is a special entity, unless the transaction is executed on a registered or exempt SEF or registered national securities exchange, and the SBS Entity does not know the identity of the counterparty at a reasonably sufficient time prior to the transaction to permit the SBS Entity to comply with the obligations of the rule. An SBS Entity would use this information, in turn, to determine the

need to comply with the requirements applicable to dealings with special entities under Rules 15fh-4(b) and 15fh-5. In the event that a counterparty may elect to opt out of "special entity" status (as defined in Rule 15fh-2(d)(4)), Rule 15fh-3(a)(3) requires an SBS Entity to notify such counterparty of its right to opt out of special entity status. An SBS Entity may satisfy these verification requirements through any reasonable means including, among other things, obtaining written representations from the counterparty as to specific facts about the counterparty.

In addition to assisting the CCO in determining compliance with the statute and proposed rules, this collection of information would be used by staff in its examination and oversight program.

ii. Disclosures by SBS Entities

Rule 15fh-3(b) requires an SBS Entity, prior to entering into an SBS, to disclose to a counterparty (other than an SBS Entity or Swap Entity) material information concerning the security-based swap in a manner reasonably designed to allow the counterparty to assess: (1) the material risks and characteristics of a particular security-based swap; and (2) any material incentives or conflicts of interest that the SBS Entity may have in connection with the security-based swap. These disclosure requirements do not apply unless the identity of the counterparty is known to the SBS Entity at a reasonably sufficient time prior to execution of the transaction to permit the SBS Entity to comply with the obligations of the rule. The rule also requires the SBS Entity to make a written record of any non-written disclosures made pursuant to this provision, and timely provide a written version of these disclosures to its counterparties no later than the delivery of the trade acknowledgement of the particular transaction.

For cleared security-based swaps, Rule 15fh-3(c)(1) requires an SBS Entity, upon request of the counterparty, to disclose the daily mark to the counterparty (other than an SBS Entity or Swap Entity) that the SBS Entity receives from the appropriate clearing agency. For uncleared security-based swaps, Rule 15fh-3(c)(2) requires an SBS Entity to disclose the daily mark to the counterparty as specified in the rule. Rule 15fh-3(c)(2) also requires disclosure of the data sources and a description of the methodology and assumptions used to prepare the daily mark for an uncleared security-based swap, as well as promptly disclose any material changes to such data sources, methodology or assumptions during the term of the security-based swap. Rule 15fh-3(c)(3) also require an SBS Entity to provide the daily mark without charge to the counterparty and without restrictions on the counterparty's internal use of the daily mark.

Rule 15fh-3(d) requires an SBS Entity to disclose information regarding clearing rights to its counterparties (other than an SBS Entity or Swap Entity), so long as the identity of the counterparty is known to the SBS Entity at a reasonably sufficient time prior to execution of the transaction to permit the SBS Entity to comply with the obligations of the rule. Before entering into a security-based swap that is subject to the clearing requirements of Section 3C(a) of the Exchange Act, the SBS Entity must disclose to the counterparty the names of the clearing agencies that accept the security-based swap for clearing, and through which of those clearing agencies the SBS Entity is authorized or permitted, directly or through a designated clearing member, to clear the security-based swap; disclose to the counterparty whether any of the named clearing agencies satisfy the standard for clearing under Section 3C(a)(1) of the Exchange Act; and notify the counterparty that it shall have the sole right to select which clearing agency shall

be used to clear the security-based swap. For security-based swaps that are not subject to the clearing requirements of Section 3C(a) of the Exchange Act, before entering into a security-based swap, the SBS Entity shall determine whether the security-based swap is accepted for clearing by one or more clearing agencies; disclose to the counterparty the names of the clearing agencies that accept the security-based swap for clearing, and whether the SBS Entity is authorized or permitted, directly or through a designated clearing member, to clear the security-based swap through such clearing agencies; and notify the counterparty that it may elect to require clearing of the security-based swap and shall have the sole right to select the clearing agency at which the security-based swap will be cleared, provided it is a clearing agency at which the SBS Entity is authorized or permitted, directly or through a designated clearing member, to clear the security-based swap. To the extent that the disclosures required by Rule 15fh-3(d) are not provided in writing prior to the execution of the transaction, the SBS Entity is required to make a written record of the non-written disclosures and provide the counterparty with a written version of these disclosures no later than the delivery of the trade acknowledgement for the transaction.

The disclosures that SBS Entities must provide to their counterparties (other than SBS Entities), swap dealers, or major swap participants (together "Swap Entities") are intended to help counterparties understand the material risks and characteristics of a particular security-based swap, the counterparty's clearing rights, as well as the material incentives or conflicts of interest that the SBS Entity may have in connection with the security-based swap. As a result, these disclosures will assist the counterparty in assessing the transaction. The disclosures will provide counterparties with a better understanding of the expected performance of the security-based swap under various market conditions, and provide counterparties with additional transparency and insight into the pricing and collateral requirements of security-based swaps.

iii. Know Your Counterparty and Recommendations

Rule 15fh-3(e) requires an SBS Dealer to establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each counterparty whose identity is known to the SBS Dealer that are necessary for conducting business with such counterparty. The essential facts are: (1) facts required to comply with applicable laws, regulations and rules; (2) facts required to implement the SBS Dealer's credit and operational risk management policies in connection with transactions entered into with such counterparty; and (3) information regarding the authority of any person acting for such counterparty.

Rule 15fh-3(f)(1) requires an SBS Dealer recommending a security-based swap or trading strategy involving a security-based swap to a counterparty (other than an SBS Entity or a Swap Entity) to: (i) undertake reasonable diligence to understand the potential risks and rewards associated with the recommendation; and (ii) have a reasonable basis to believe that the recommendation is suitable for the counterparty. To establish a reasonable basis for a recommendation, an SBS Dealer must have or obtain relevant information regarding the counterparty, including the counterparty's investment profile, trading objectives, and its ability to absorb potential losses associated with the recommended security-based swap or trading strategy involving a security-based swap.

Under Rule 15fh-3(f)(2), an SBS Dealer may also fulfill its suitability obligations under Rule 15fh-3(f)(1)(ii) with respect to an institutional counterparty (defined as a counterparty that is an eligible contract participant as defined in clauses (A)(i), (ii), (iii), (iv), (viii), (ix) or (x), or clause (B)(ii) (other than a person described in clause (A)(v)) of Section 1a(18) of the Commodity Exchange Act and the rules and regulations thereunder, or any person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million) if: (i) the SBS Dealer reasonably determines that the counterparty (or its agent) is capable of independently evaluating the investment risks with regard to the relevant security-based swap or trading strategy involving a security-based swap; (ii) the counterparty (or its agent) affirmatively represents in writing that it is exercising its independent judgment in evaluating the recommendations of the SBS Dealer with regard to the relevant security-based swap or trading strategy; and (iii) the SBS Dealer discloses to the counterparty that it is acting in its capacity as a counterparty and is not undertaking to assess the suitability of the security-based swap or trading strategy for the counterparty. Under Rule 15fh-3(f)(3), an SBS Dealer will be deemed to have satisfied the requirements of Rule 15fh-3(f)(2)(i) if it receives written representations that: (i) in the case of a counterparty that is not a special entity, the counterparty has complied in good faith with written policies and procedures that are reasonably designed to ensure that the persons responsible for evaluating the recommendation and making trading decisions on behalf of the counterparty are capable of doing so; and (ii) in the case of a counterparty that is a special entity, satisfy the terms of the safe harbor in Rule 15fh-5(b).

These collections of information will help an SBS Dealer comply with applicable laws, regulations and rules. They will also assist an SBS Dealer in effectively dealing with the counterparty, including by making recommendations that are appropriate for the counterparty, and by collecting information from the counterparty necessary for the SBS Dealer's credit and risk management purposes. These collections of information will also assist an SBS Dealer in determining whether it would be reasonable to rely on various representations from a counterparty and evaluating the risks of trading with that counterparty. The information would also assist the CCO in determining that the SBS Entity had policies and procedures reasonably designed to obtain and retain essential facts concerning each known counterparty and to make suitable recommendations to its counterparties. The Commission staff will also use these collections of information in its examination and oversight program.

iv. Fair and Balanced Communications

Rule 15fh-3(g) requires an SBS Entity to communicate with its counterparties in a fair and balanced manner based on principles of fair dealing and good faith. The rule requires that: (1) communications provide a sound basis for evaluating the facts with regard to a particular security-based swap or trading strategy involving a security-based swap; (2) communications not imply that past performance will recur or make any exaggerated or unwarranted claim, opinion, or forecast; and (3) any statement referring to potential opportunities or advantages presented by a particular security-based swap be balanced by an equally detailed statement of the corresponding risks.

The collection of information concerning the risks of a security-based swap will assist an SBS Entity in communicating with counterparties in a fair and balanced manner. It will also assist an SBS Dealer in making suitable recommendations to counterparties, and assist the CCO

in ensuring that the SBS Entity is communicating with counterparties in a fair and balanced manner based on principles of fair dealing and good faith. The receipt of information in a fair and balanced manner will assist the counterparty in making more informed investment decisions. The Commission staff will also use this collection of information in its examination and oversight program.

v. Supervision

Rule 15fh-3(h) requires an SBS Entity to establish and maintain a system to supervise, and to diligently supervise, its business and the activities of its associated persons. Such a system shall be reasonably designed to prevent violations of the provisions of applicable federal securities laws and the rules and regulations thereunder relating to its business as an SBS Entity. At a minimum, the supervisory system must: (i) designate at least one person with authority to carry out supervisory responsibilities for each type of business in which the SBS Entity engages for which registration as an SBS Entity is required; (ii) use reasonable efforts to determine all such supervisors are qualified, either by virtue of experience or training, to carry out their assigned responsibilities; and (iii) establish, maintain and enforce written policies and procedures addressing the supervision of the types of security-based swap business in which the SBS Entity is engaged and the activities of it associated persons that are reasonably designed to prevent violations of applicable securities laws and rules and regulations thereunder.

Rule 15fh-3(h)(2) requires that such written policies and procedures must include, at a minimum, procedures: (a) for the review by a supervisor of transactions for which registration as an SBS Entity is required; (b) for the review by a supervisor of incoming and outgoing written (including electronic) correspondence with counterparties or potential counterparties and internal written communications relating to the SBS Entity's security-based swap business; (c) for a periodic review, at least annually, of the security-based swap business in which the SBS Entity engages that is reasonably designed to assist in detecting and preventing violations of applicable federal securities laws and regulations; (d) to conduct a reasonable investigation regarding the good character, business repute, qualifications, and experience of any person prior to that person's association with the SBS Entity; (e) to consider whether to permit an associated person to establish or maintain a securities or commodities account or a trading relationship in the name of, or for the benefit of, such associated person at another financial institution, and if permitted, to supervise the trading at such institution; (f) describing the supervisory system, including the titles, qualifications and locations of supervisory persons and the responsibilities of each supervisory person with respect to the types of business in which the SBS Entity is engaged; (g) prohibiting an associated person who performs a supervisory function from supervising his or her own activities or reporting to, or having his or her compensation or continued employment determined by, a person or persons he or she is supervising; provided that if the SBS Entity determines, with respect to any of its supervisory personnel, that compliance with this requirement is not possible because of the firm's size or a supervisory person's position within the firm, then the SBS Entity must document the factors used to reach such determination and how the supervisory arrangement otherwise complies with this rule, and include a summary of such determination in the annual compliance report prepared by the SBS Entity's CCO pursuant to Rule 15fk-1(c); (h) reasonably designed to prevent the supervisory system from being compromised due to conflicts of interest that may be present with respect to the associated person being supervised, including the position of such person, the revenue such person

generates for the SBS Entity, or any compensation that the associated person conducting the supervision may derive from the associated person being supervised; and (i) reasonably designed, taking into consideration the nature of the SBS Entity's business, to comply with the duties set forth in Section 15F(j) of the Exchange Act.

Rule 15fh-3(h)(3) provides that an SBS Entity (or associated person of an SBS Entity) will not be deemed to have failed to diligently supervise another person if that person is not subject to his or her supervision, or if: (i) the SBS Entity has established and maintained written policies and procedures (as required in Rule15fh-3(h)(2)(iii)), and a documented system for applying those policies and procedures that would reasonably be expected to prevent and detect, insofar as practicable, any violation of the federal securities laws and the rules and regulations thereunder relating to security-based swaps; and (ii) the SBS Entity or associated person has reasonably discharged the duties and obligations required by such written policies and procedures and documented system and did not have a reasonable basis to believe that such written policies and procedures and documented system were not being followed.

Rule 15fh-3(h)(3) requires an SBS Entity promptly to amend its written supervisory procedures when material changes occur in the applicable securities law or in its business or supervisory system and to communicate such changes to all relevant associated persons.

The collection of information in connection with the establishment, maintenance and enforcement of a supervisory system will assist an SBS Entity in achieving compliance with all applicable securities laws, rules and regulations. The CCO may use these collections of information in discharging his or her duties under proposed Rule 15fk-1 and in determining whether remediation efforts are required. The collection of information under Rule 15fh-3(h) will also be useful to supervisors in understanding and carrying out their supervisory responsibilities. The Commission staff will also use this collection of information in its examination and oversight program.

vi. SBS Dealers Acting as Advisors to Special Entities

Rule 15fh-4(a) imposes anti-fraud requirements on SBS Entities and (b)(1) imposes the duty on an SBS Dealer that acts as an advisor to a special entity regarding a security-based swap to make a reasonable determination that any security-based swap or trading strategy involving a security-based swap recommended by the SBS Dealer is in the best interests of the special entity. Paragraph (b)(2) also requires an SBS Dealer acting as an advisor to a special entity to make reasonable efforts to obtain such information as it considers necessary to make a reasonable determination that a security-based swap or related trading strategy is in the best interests of the special entity. The information that must be obtained to make this reasonable determination includes, but is not limited to: (i) the authority of the special entity to enter into a security-based swap; (ii) the financial status and future funding needs of the special entity; (iii) the tax status of the special entity; (iv) the hedging, investment, financing or other objectives of the special entity; (v) the experience of the special entity with respect to security-based swaps, generally, and security-based swaps of the type and complexity being recommended; (vi) whether the special entity has the financial capability to withstand changes in market conditions during the term of the security-based swap; and (vii) such other information as is relevant to the particular facts and circumstances of the special entity, market conditions and the type of security-based swap or

trading strategy being recommended. However, the requirements of Rule 15fh-4(b) do not apply to a security-based swap if: (i) the transaction is executed on a registered or exempt SEF or a registered national securities exchange; and (ii) the SBS Dealer does not know the identity of the counterparty at a reasonably sufficient time prior to execution of the transaction to permit the SBS Dealer to comply with the obligations of this rule.

Rule 15fh-2(a) generally provides that an SBS Dealer acts as an advisor to a special entity when it recommends a security-based swap or security-based swap trading strategy to that special entity. Rule 15fh-2(a)(1) provides a safe harbor under which an SBS Dealer will not be deemed to act as an advisor to a special entity that is subject to Title I of ERISA if: (i) the special entity represents in writing that it has a fiduciary as defined in Section 3 of ERISA that is responsible for representing the special entity in connection with the security-based swap; (ii) the fiduciary represents in writing that it acknowledges that the SBS Dealer is not acting as an advisor; and (iii) the special entity represents in writing that (a) it will comply in good faith with written policies and procedures reasonably designed to ensure that any recommendation the special entity receives from the SBS Dealer involving a security-based swap transaction is evaluated by a fiduciary before it is entered into; or (b) that any recommendation the special entity receives from the SBS Dealer involving a security-based swap transaction will be evaluated by a fiduciary before the transaction is entered into.

Rule 15fh-2(a)(2) provides a safe harbor for transactions between an SBS Dealer and any special entity. Under this rule, an SBS Dealer that recommends a security-based swap or security-based swap trading strategy to any special entity (other than a special entity subject to Title I of ERISA) will not be deemed to act as an advisor to that special entity if the special entity represents in writing that it acknowledges that the SBS Dealer is not acting as an advisor, and that it will rely on advice from a qualified independent representative, as defined in Rule 15fh-5(a). The SBS Dealer must also disclose to the special entity that it is not undertaking to act in the best interests of the special entity, as otherwise required by Section 15F(h)(4) of the Exchange Act.

The information that will be collected pursuant to Rule 15fh-4(b) will assist an SBS Dealer that is acting as an advisor to a special entity to make a reasonable determination that any security-based swap or trading strategy involving a security-based swap recommended by the SBS Dealer is in the best interests of the special entity. Information collected pursuant to Rule 15fh-2(a) will assist an SBS Dealer seeking to establish that it is not acting as an advisor to a special entity. These collections of information will also assist a CCO in determining whether the SBS Dealer has complied with the business conduct standards. The Commission staff will also use this collection of information in its examination and oversight program.

vii. SBS Entities Acting as Counterparties to Special Entities

Rule 15fh-5(a)(1) requires an SBS Entity that offers to enter into or enters into a security-based swap with a special entity (other than a special entity that is an employee benefit plan subject to Title I of ERISA), to have a reasonable basis to believe that the special entity has a qualified independent representative that meets certain specified qualifications. For purposes of Rule 15fh-5(a)(1), a qualified independent representative must: (i) have sufficient knowledge to evaluate the transaction and related risks; (ii) not be subject to a statutory disqualification; (iii)

undertake a duty to act in the best interests of the special entity; (iv) make appropriate and timely disclosures to the special entity of material information concerning the security-based swap; (iv) evaluate, consistent with any guidelines provided by the special entity, the fair pricing and appropriateness of the security-based swap; (v) in the case of a special entity defined in Rule 15fh-2(d)(2) or (5), be subject to the pay-to-play prohibitions of the Commission, the CFTC, or a self-regulatory organization that is subject to the jurisdiction of the Commission or the CFTC (unless the independent representative is an employee of the special entity); and (vii) be independent of the SBS Entity that is the counterparty to a proposed security-based swap.

Rule 15fh-5(a)(1) also provides that a representative of a special entity will be "independent" of an SBS Entity if the representative does not have a relationship with the SBS Entity, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the representative. In addition, a special entity's representative will be deemed to be "independent" of an SBS Entity if: (1) the representative is not and was not an associated person of the SBS Entity within one year of representing the special entity in connection with the security-based swap; (2) the representative provides timely disclosures to the special entity of all material conflicts of interest that could reasonably affect the judgment or decision making of the representative with respect to its obligations to the special entity, and complies with policies and procedures reasonably designed to manage and mitigate such material conflicts of interest; and (3) the SBS Entity did not refer, recommend, or introduce the representative to the special entity within one year of the representative's representation of the special entity in connection with the security-based swap.

Rule 15fh-5(a)(2) provides that an SBS Entity that offers to enter into or enters into a security-based swap with a special entity as defined in Rule 15fh-2(d)(3) (any employee benefit plan that subject to Title I of ERISA) must have a reasonable basis to believe the special entity has a representative that is a fiduciary as defined in Section 3 of ERISA.

Rule 15fh-5(b) provides safe harbors for SBS Dealers seeking to form a reasonable basis regarding the qualifications of the independent representative. Under Rule 15fh-5(b)(1), an SBS Entity shall be deemed to have a reasonable basis to believe that a special entity (other than an ERISA special entity) has a representative that satisfies the requirements of Rule 15fh-5(a)(1) if: (i) the special entity represents in writing to the SBS Entity that it has complied in good faith with written policies and procedures reasonably designed to ensure that it has selected a representative that satisfies the requirements of Rule 15fh-5(a)(1), and that such policies and procedures provide for ongoing monitoring of the performance of such representative consistent with Rule 15fh-5(a)(1); and (ii) the representative represents in writing to the special entity and the SBS Entity that the representative: (a) has policies and procedures reasonably designed to ensure that it satisfies the applicable requirements of Rule 15fh-5(a)(1); (b) meets the independence requirements of Rule 15fh-5(a)(1)(vii); and (c) is legally obligated to comply with the requirements of Rule 15fh-5(a)(1) by agreement, condition of employment, law, rule, regulation, or other enforceable duty.

Under Rule 15fh-5(b)(2), an SBS Entity shall be deemed to have a reasonable basis to believe that an ERISA special entity has a representative that satisfies the requirements of Rule 15fh-5(a)(2), provided that the special entity provides in writing to the SBS Entity the

representative's name and contact information, and represents in writing that the representative is a fiduciary as defined in Section 3 of ERISA.

Under Rule 15fh-5(c), before initiation of a security-based swap, an SBS Dealer must disclose to the special entity in writing the capacity in which the SBS Dealer is acting in connection with the security-based swap, and, if the SBS Dealer engages in business with the counterparty in more than one capacity, the SBS Dealer must disclose the material differences between such capacities and any other financial transaction or service involving the counterparty to the special entity.

Under Rule 15fh-5(d), formerly Rule 15fh-5(c), the provisions of Rule 15fh-5 do not apply when two conditions are satisfied: (1) the transaction is executed on a registered or exempt SEF or registered national securities exchange; and (2) the SBS Entity is unaware of the counterparty's identity, at a reasonably sufficient time prior to the execution of the transaction to permit the SBS Entity to comply with the obligations of the rule.

The information collected under Rule 15fh-5(a) will assist an SBS Entity in forming a reasonable basis that the special entity has a qualified, independent representative that meets the requirements of the rule. Disclosures under Rule 15fh-5(c) regarding the capacity in which an SBS Entity is operating will provide greater clarity to special entities regarding whether an SBS Entity is acting in its interest, or as a counterparty or principal with interests that are potentially adverse to the special entity. These collections of information will also assist the CCO in determining whether the SBS Entity has complied with the relevant provisions of the Exchange Act. The Commission staff will also use this collection of information in its examination and oversight program.

viii. Political Contributions

Rule 15fh-6(b) prohibits an SBS Dealer from offering to enter into, or entering into a security-based swap, or a trading strategy involving a security-based swap, with a municipal entity within two years after any contribution by the SBS Dealer or its covered associates to an official of such municipal entity, subject to certain exceptions. These prohibitions do not apply to certain contributions made by an SBS Dealer's covered associate if the SBS Dealer discovered the contribution within 120 calendar days of the date of such contribution, the contribution did not exceed $350, and the covered associate obtained a return of the contribution within 60 calendar days of the date of discovery of the contribution by the SBS Dealer. However, an SBS Dealer may not rely on that provision more than three times in any 12-month period if it has more than 50 covered associates, and no more than twice if it has 50 or fewer covered associates. The Commission may also, upon application, exempt an SBS Dealer from the prohibitions of the rule after consideration of several factors.

The provisions of Rule 15fh-6 do not apply when two conditions are satisfied: (1) the transaction is executed on a registered or exempt SEF or registered national securities exchange; and (2) the SBS Dealer is unaware of the counterparty's identity, at a reasonably sufficient time prior to the execution of the transaction to permit the SBS Dealer to comply with the obligations of the rule.

Rule 15fh-6 is intended to deter SBS Dealers from participating, even indirectly, in pay to play practices. The information collected pursuant to this rule related to political contributions made by the security-based swap dealer or its covered associates will assist the SBS Dealer and the Commission in verifying this deterrence. The rule will also assist the CCO in determining whether the SBS Dealer has complied with relevant provisions of the Exchange Act. The Commission staff will also use this collection of information in its examination and oversight program.

ix. Chief Compliance Officer

Rule 15fk-1 requires an SBS Entity to designate an individual to serve as CCO on its registration form. Under Rule 15fk-1(b)(1) the CCO must report directly to the board of directors or senior officer of the SBS Entity. Under Rule 15fk-1(b)(2), the CCO must take reasonable steps to ensure that the SBS Entity establishes, maintains, and reviews written policies and procedures reasonably designed to achieve compliance with the Exchange Act and the rules and regulations thereunder relating to its business as an SBS Entity by: (1) reviewing the SBS Entity's compliance with the SBS Entity requirements described in Section 15F of the Exchange Act and the rules and regulations thereunder (where such review shall involve preparing the SBS Entity's annual assessment of its written policies and procedures reasonably designed to achieve compliance with Section 15F of the Exchange Act and the rules and regulations thereunder); (2) taking reasonable steps to ensure the SBS Entity establishes, maintains, and reviews policies and procedures reasonably designed to remediate non-compliance issues identified by the CCO through any means, including any compliance office review, look-back, internal or external audit finding, self-reporting to the Commission and other appropriate authorities, or complaint that can be validated; and (3) taking reasonable steps to ensure that the SBS Entity establishes and follows procedures reasonably designed for the handling, management response, remediation, retesting, and resolution of non-compliance issues. Under Rule 15fk-1(b)(3), the CCO must take reasonable steps to resolve any material conflicts of interest that may arise, in consultation with the board or the senior officer of the SBS Entity. Under Rule 15fk-1(b)(4), the CCO must administer each policy and procedure that is required to be established pursuant to Section 15F of the Exchange Act and the rules and regulations thereunder.

Under Rule 15fk-1(c), the CCO must also prepare and sign an annual compliance report that must be submitted to the Commission within 30 days following the deadline for filing the SBS Entity's annual financial report with the Commission pursuant to Section 15F of the Exchange Act and the rules and regulations thereunder. This annual compliance report must contain a description of the written policies and procedures of the SBS Entity described in Rule 15fk-1(b), outlined above, including the code of ethics and conflict of interest policies. The compliance report must also include, at a minimum, a description of: (1) the SBS Entity's assessment of the effectiveness of its policies and procedures relating to its business as an SBS Entity; (2) any material changes to the policies and procedures since the date of the preceding compliance report; (3) any areas for improvement and recommended potential or prospective changes or improvements to its compliance program and resources devoted to compliance; (4) any material non-compliance matters identified; and (5) the financial, managerial, operational, and staffing resources set aside for compliance with the Exchange Act and the rules and regulations thereunder relating to its business as an SBS Entity, including any material

deficiencies in such resources. The report must be submitted to the board of directors and audit committee (or equivalent bodies) and the senior officer of the SBS Entity prior to submission to the Commission. The report also must be discussed in one or more meetings (addressing the obligations of this rule) that were conducted by the senior officer with the CCO in the preceding 12 months, and must include a certification by the CCO or senior officer that, to the best of his or her knowledge and reasonable belief and under penalty of law, the information contained in the compliance report is accurate and complete in all material respects.

The rule allows an SBS Entity to incorporate by reference sections of a compliance report that has been submitted with the current or immediately preceding reporting period to the Commission, and allows an SBS Entity to request from the Commission an extension of time to submit its compliance report, provided that the SBS Entity's failure to timely submit the report could not be eliminated by the SBS Entity without unreasonable effort or expense. Extensions of the deadline will be granted at the discretion of the Commission. The rule also requires an SBS Entity to promptly submit an amended compliance report if material errors or omissions in the report are identified.

Under Rule 15fk-1(d), the compensation and removal of the CCO shall require the approval of a majority of the board of directors of the SBS Entity.

The information collected under Rule 15fk-1 will assist the CCO in overseeing and administering the SBS Entity's compliance with relevant provisions of the Exchange Act. The Commission staff will also use this collection of information in its examination and oversight program.

2023 Proposed Amendment

The proposed amendments to Rule 15fk-1 would require the CCO report to be submitted to the Commission electronically through the EDGAR system as an Interactive Data File in accordance with Rule 405 of Regulation S-T (17 CFR §232.405) within 30 days following the deadline for filing the security-based swap dealer's or major security-based swap participant's annual financial report with the Commission pursuant to section 15F of the Exchange Act and rules and regulations thereunder. This amendment to Rule 15fk-1 only governs the manner in which the CCO Annual Report is submitted to the Commission. Thus, we believe there will be no change to the purpose and use of the information collected by this rule.

3. Consideration Given to Information Technology

The rules do not prescribe particular forms or methods of compliance for SBS Entities so as to allow flexibility with respect to new technologies as they develop.

2023 Proposed Amendment

In March 2023, the Commission proposed amendments under the Exchange Act to specifically require electronic submission on the Commission's EDGAR system of the reports required pursuant to Rule 15fk-1. Requiring the electronic submission of these reports through EDGAR would specify the manner of submission, streamline and simplify the filing process for

an SBS Entity and the Commission, eliminate the need to establish manual processes that may introduce error, and make submissions available immediately to Commission staff. Furthermore, requiring the report to be submitted electronically in Inline XBRL would facilitate access to the information included on the CCO reports, enabling Commission staff to perform more efficient retrieval, aggregation, and comparison across different SBS Entities and time periods, as compared to an unstructured PDF, HTML, or ASCII format requirements for the reports.

The functionality enabled by a machine-readable data requirement would allow Staff to better utilize CCO reports to gauge the soundness of SBS Entity compliance programs (e.g., by enabling efficient staff identification of material changes to compliance policies or material non-compliance matters) to ensure compliance with the Exchange Act and rules and regulations thereunder applicable to security-based swaps, thus ultimately furthering the Commission's mission of maintaining fair, orderly, and efficient markets. In addition, the proposed structured data requirement would enable EDGAR to perform technical validations (i.e., programmatic checks to ensure the reports are appropriately standardized, formatted, and complete) upon intake of the reports, thus potentially improving the quality of the submitted data by decreasing the incidence of non-substantive errors.

The Commission proposed Inline XBRL (and not custom XML) as the structured data language to be required for CCO reports, because those reports consist of extended narrative descriptions, and whereas custom XML data languages only have the capacity to accommodate brief narrative descriptions, Inline XBRL can accommodate longer narrative descriptions with presentation capabilities that preserve human-readability while maintaining machine-readability.

4. Duplication

Because security-based swaps were largely unregulated prior to these rules, the information was not generally otherwise filed with the Commission. The staff expects that many SBS Entities will be dually registered with the CFTC as Swap Entities. As the rules are largely similar to those adopted by the CFTC, dually registered entities will already have procedures and systems in place to collect the information. However, the information provided to the CFTC will address swaps while the information provided to the Commission will address SBSs. With respect to mixed swaps, duplicative information may be provided to both the CFTC and the Commission, depending on the facts and circumstances.

5. Effect on Small Entities

Based on the existing information about the SBS market, we believe that the SBS market, while broad in scope, is largely dominated by large entities and their large institutional customers. Under current law, all SBS market participants are required to be "eligible contract participants." The basic thresholds under the definition of "eligible contract participant" are currently $10 million in total assets for natural persons and $25 million in total assets for corporations and other legal entities. Thus, we believe it is unlikely that the collection of information will have an impact on small entities.

2023 Proposed Amendment

Currently, none of the SBS Entities registered with the Commission are "small entities" and based on feedback from industry participants about the SBS market, it is unlikely that any other entities that will register with the Commission in the future as SBSDs will be "small entities." Thus, we believe it is unlikely that the requirements under the amended Rule 15fk-1(c)(2)(ii)(A) will affect small entities.

6. Consequences of Not Conducting Collection

The information is collected as each transaction warrants, and there is no way to reduce the frequency of collection without undermining the statutory provisions or theirs intended purposes.

2023 Proposed Amendment

It is important that this information be collected through a central intake mechanism (e.g. the EDGAR System) with a uniform means of submission for purposes of helping to ensure that all registrants are complying with Rule 15fk-1. Without a central intake mechanism, it will be significantly more difficult for the staff of the Commission to catalog and review the submitted reports, and help to ensure that all registrants comply with the requirements of Rule 15fk-1.

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

There are no special circumstances. This information collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

With respect to the 2023 amendments, the Commission published a release soliciting comment on the revised "collection of information" requirements and associated paperwork burdens associated with this partial revision to the collection of information on April 18, 2023 (88 FR 23920). A copy of the release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. 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 of Gift

Not applicable.

10. Confidentiality

The Commission believes the information collected pursuant to Rule 15fk-1(c)(2)(ii)(A) will not be publicly available. To the extent that the Commission receives confidential

information pursuant to this collection of information, such information will be kept confidential, subject to the provisions of the Freedom of Information Act ("FOIA").

11. Sensitive Questions

The Commission does not collect or store any information associated with the collection of information. The agency has determined that neither a PIA nor a SORN are required in connection with the collection of information.

12. Burden of Information Collection

Currently Approved Burden: The Commission estimates, based on data obtained from the CFTC and DTCC, that approximately 44 entities have registered under the definition of SBS Dealer, and that 0 entities have registered under the definition of Major SBS Participant.[4] Further, we estimate that approximately 41 of these 44 SBS Entities are dually registered with the CFTC as Swap Entities. We also estimate that there are currently 15,187 security-based swap market participants of which 11,531 are also swap market participants. We estimate that there are approximately 11,219 unique SBS Dealer and non-SBS-Dealer pairs.[5] Accordingly, we have used these estimates for the calculation of hour and cost burdens for the rule provisions that we anticipate have a "collection of information" burden within the meaning of the PRA of 1995.

The Commission estimates that the aggregate hour burden of the ongoing reporting and disclosures required by the BCS Rules, as described above, is approximately 486,535 hours calculated as follows:

The Commission estimates that:

- **15fh-3(a) – Verification of Status**

  Approximately 44 SBS Entities (of which we expect approximately 41 will be dually registered with the CFTC as Swap Entities) will be required to verify whether a counterparty is an ECP or, is a special entity, as required by Rule 15fh-3(a). These verification requirements are generally the same under the business conduct standards adopted by the CFTC. Rule 15fh-3(a)(3) requires an SBS Entity to verify whether a counterparty is eligible to elect not to be a special entity and if so, to notify the counterparty if its right to opt out of special entity status. Rule 15fh-2(d)(4) includes employee benefit plans that are defined in Section 3 of ERISA, not otherwise defined as a special entity, within the special entity definition, unless such employee benefit plan elects to opt out of special entity status. In contrast, the corollary CFTC rule allows employee benefit plans defined in Section 3 of ERISA to opt in to special entity status,

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[4] List of Registered Security-Based Swap Dealers and Major Security-Based Swap Participants, available at: https://www.sec.gov/files/list_of_sbsds_msbsps-_01-03-2022locked-final.xlsx (providing the list of registered security-based swap dealers and major security-based swap participants that was updated as of January 3, 2022). Information concerning Swap Entities registered with the CFTC available at: (https://www.cftc.gov/IndustryOversight/Intermediaries/MajorSwapParticipantMSP/index.htm).

[5] Unless otherwise noted, estimates were derived from the DTCC-TIW data set (November 30, 2006 through December 31, 2020).

and requires SBS Entities to notify counterparties eligible to opt in of their ability to do so. The Commission holds SBS Entities to a reasonable person standard with respect to reliance on counterparty representations and required due diligence. As discussed in the Adopting Release, the rule does not stipulate how SBS Entities must comply and would permit the parties to follow industry practice whereby they agree in master agreement documentation to update any material changes or to "bring down" or renew afresh the counterparty representations previously made for any subsequent action.[6] For such instances, we consider this as part of the overall SBS Entity recordkeeping requirements.

SBS Entities – Adherence Letter [0 hours]

We estimate that approximately 44 SBS Entities (of which we expect approximately 41 will be dually registered with the CFTC as Swap Entities) will be required to verify whether a counterparty is an ECP or special entity, as required by Rule 15fh-3(a). As noted above, Rule 15fh-3(a)(3) differs from the CFTC's rule, which instead includes an opt-in for plans "defined in" ERISA, but not subject to Title I of ERISA. We understand that the industry has developed protocols and questionnaires that allow the counterparty to indicate its status, whether or not it is a special entity and whether it elects to be treated as a special entity. As a result of these protocols and questionnaires, we continue to believe that these dually registered SBS Entities will not incur any start-up or ongoing burdens in complying with Rules 15fh-3(a)(1) and (2) because they already adhere to the relevant protocols to obtain the information under the CFTC's business conduct standards. We estimate the remaining 3 SBS Entities will have already incurred start-up costs to adhere to the relevant protocols, including submitting an adherence letter to ISDA, and we anticipate will not have any ongoing burdens as well.

SBS Market Participants – Adherence Letter [0 hours]

We believe that approximately 11,531 of the 15,187 security-based swap market participants (which include SBS Entities and counterparties) are also swap market participants and likely already adhere to the relevant protocols. These 11,531 market participants would not have any start-up burdens or ongoing burdens with respect to verification. The remaining 3,656 market participants (less the 3 SBS Entities) would have previously incurred one time start up burdens to comply with the relevant protocols, including submitting an adherence letter to ISDA, and we anticipate would not have any ongoing burdens with respect to this rule.

SBS Entities – Notice [0 hours]

The 44 SBS Entities would have previously incurred one-time, initial burdens in connection with preparing the required notice under Rule 15fh-3(a)(3) for counterparties defined in Rule 15fh-2(d)(4) and we anticipate would not have any ongoing burdens with respect to this rule.

Counterparties – Representations [0 hours]

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6 Adopting Release at 29,979-80.

As discussed above, the Adopting Release states SBS Entities and counterparties may follow industry practice and agree in master agreement documentation as to the required representations, how to inform of material changes to representations and/or refresh such representations by "bringing down" or renewing the representations for subsequent actions. Once the initial diligence is conducted and counterparty representations are made, we consider this part of the overall SBS Entity recordkeeping requirements. We believe that approximately 11,531 of the 15,187 security-based swap market participants (which include SBS Entities and counterparties) are also swap market participants and likely already adhere to the relevant protocol. These 11,531 market participants would not have any start-up burdens or ongoing burdens with respect to verification. The remaining 3,656 market participants (less the 3SBS Entities) would have previously incurred one time start up burdens to comply with the protocols and representations and we anticipate would not have any ongoing burdens with respect to this rule.

- **15fh-3(b), (c), and (d) – Disclosure by SBS Entities**:

Pursuant to Rules 15fh-3(b), (c), and (d), SBS Entities would be required to provide certain disclosures to market participants. Based on our experience with burden estimates for similar disclosure requirements,[7] as well as our discussions with market participants, we understand that the SBS Entities that are dually registered with the CFTC already provide their counterparties with disclosures similar to those that are required under Rules 15fh-3(b) and (c). To the extent that the material characteristics required by Rule 15fh-3(b)(1) are included in the documentation of a security-based swap, such as the master agreement, credit support annex, trade confirmation or other documents, we do not believe that any additional burden will be required for the disclosure of material characteristics. For other required disclosures relating to material risks required by Rule 15fh-3(b)(1) or disclosures relating to material incentives or conflicts of interest required by Rule 15fh-3(b)(2), we understand that certain market participants already have developed standardized disclosures for some of these requirements.[8] For example, many SBS Dealers already provide a statement of potential risks related to investing in certain security-based swaps to their counterparties. However, to the extent that an SBS Entity and counterparty engage in a highly bespoke transaction, the standardized disclosure may not satisfy all of the SBS Entities disclosure requirements. In those cases, the SBS Entity will likely use a combination of standardized disclosures and de novo disclosures to fulfill its obligations under Rules 15fh-3(b)(1) and (2).

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7 For disclosures similar to the disclosure of methodologies and assumptions of daily mark, see Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments and Disclosure of Quantitative and Qualitative Information about Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments and Derivative Commodity Instruments, Securities Act Release No. 7386 (Jan. 31, 1997), 62 FR 6044 (Feb. 10, 1997).

8 See e.g., ISDA General Disclosure Statement for Transactions (August 2015). To the extent that disclosures of material risks and characteristics under Rule 15fh-3(b)(1) or disclosures of material incentives and conflicts of interest under Rule 15fh-3(b)(2) are initially provided orally, the additional burden of providing a written version of the disclosure at or before delivery of the trade confirmation pursuant to Rule 15fh-3(b)(3) will be considered in connection with the overall reporting and recordkeeping burdens of the SBS Entity.

In some cases, such as disclosures about the daily mark for a cleared security-based swap, the SBS Entity is obligated to provide the daily mark upon request. We understand that in the current model of clearing security-based swaps, the security-based swap between the SBS Entity and counterparty is terminated upon novation by the clearing agency. The SBS Entity would no longer have any obligation to provide a daily mark to the original counterparty because a security-based swap no longer exists between them. Therefore, there would not be any ongoing burden on the SBS Entity. Depending on how quickly the security-based swap is cleared, there may not be an initial burden on the SBS Entity either. Unlike the CFTC's rule, Rule 15fh-3(c)(1) does not require a pre-trade daily mark. So if the security-based swap is cleared before the end of the next day and the clearing results in novation of the original swap, the SBS Entity would not have any daily mark obligations for the cleared swap.

For uncleared security-based swaps, we believe that SBS Entities may need to slightly modify the models used for calculating variation margin to calculate the daily mark. In addition, the SBS Entity will need to provide the counterparty with a description of the methodologies and assumptions used to calculate the daily mark.

Nevertheless, existing accounting standards and other disclosure requirements under the Exchange Act, such as FASB Accounting Standards Codification Topic 820, Fair Value Measurements and Disclosures, or Item 305 of Regulation S-K, require disclosures similar to the description of the methodologies and assumptions of the daily mark. To the extent that the model it uses and methodologies and assumptions are not already prepared, the SBS Entity may need to prepare the initial description of the data sources, methodologies and assumptions. In addition, the SBS Entity will have an ongoing burden of updating the disclosure for any material changes to the data sources, methodologies and assumptions.

We continue to believe that SBS Entities will use internal staff to revise existing disclosures to comply with Rules 15fh-3(b) and (c), and to prepare language which Rule 15fh-3(d) requires SBS Entities to disclose regarding the clearing options available for a particular security-based swap. In addition, the requirements of Rule 15fh-3(d) are not the same as the CFTC requirements to disclose clearing options, so SBS Entities will need to develop new disclosures.

We estimate that in 2020, there were approximately 354,814 security-based swap transactions between an SBS Dealer and a counterparty that is not an SBS Dealer. Of these, we estimate that approximately 225,924 were new and 6,841 were amended trades (totaling 232,765) that would require these disclosures.[9] We recognize that the time required to develop an infrastructure to provide these disclosures will vary significantly depending on, among other factors, the complexity and nature of the SBS Entity's

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[9] Available DTCC-TIW data as of December 31, 2020 indicated approximately 354,814 transactions between SBS Entities and non-SBS Entities during that time period. Of these, approximately 225,924 were new trades, and 6,841 were amendments. Of the approximately 225,924 new trades between likely SBS Dealers and non-dealers, 147,266 trades or approximately 65% were voluntarily cleared bilateral trades in 2020.

security-based swap business, its market risk management activities, its existing disclosure practices, whether the security-based swap is cleared or uncleared and other applicable regulatory requirements. Under the rule, as adopted, SBS Entities could make the required disclosures to their counterparties through standardized documentation, such as a master agreement or other written agreement, if the parties so agree. We recognize that it will likely be necessary to prepare some disclosures that are particular to a transaction to meet all of an SBS Entity's disclosure obligations under Rules 15fh-3(b), (c) and (d). We also believe that, because the reporting burden will generally require refining or revising an SBS Entity's existing disclosure processes, the disclosures will be prepared internally.

Disclosure – SBS Entities [181,280 hours]

At adoption, we conservatively estimated the initial one-time only burden of SBS Entities for initial analysis and development of specifications, on average, would require three persons from trading and structuring, three persons from legal, two persons from operations, and four persons from compliance, for a total of 12 persons spending 100 hours each, to comply with the rules.[10] These initial burdens (a total of 66,000 hours annualized at 22,000 hours per year over three years) have already been incurred. Following the initial analysis and development of specifications, we continue to estimate that half of these persons, approximately 6, will still be required to spend approximately 20 hours per year (120 hours annually per SBS Entity), to re-evaluate and modify the disclosures and system requirements as necessary, amounting to an ongoing aggregate annual total reporting burden of 5,280 hours per year.[11]

We also previously estimated that SBS Entities would incur initial, one-time only burdens totaling 440,000 hours (annualized at 146,666.67 over three years) for the creation of necessary information technology infrastructure. These initial burdens have already been incurred. We continue to estimate that once an information technology infrastructure is created, maintenance of this system will require each SBS Entity to use two full-time persons per year for a total ongoing reporting burden of 176,000 hours annually.[12] The total combined annual ongoing reporting burden is thus 181,280 hours (5,280 hours + 176,000 hours). The annual burden per respondent is 4,120 hours (181,280 ÷ 44).

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[10] In the Proposing Release, we used this estimate and it recognizes the development of market practice to comply with very similar CFTC rules. It also recognizes that given the current model used for clearing security-based swaps, daily mark disclosures in that context are unlikely to be required. Furthermore, no comments were received on these estimates. As a result, we conservatively continue to use these estimates. We note that some SBS Entities may choose to utilize in-house counsel to review, revise and prepare these disclosures.

[11] The annual estimate is based on the following calculation: (44 SBS Entities) x (6 persons) x (20 hours) = 5,280 hours.

[12] The estimate is based on the following calculation: (44 SBS Entities) x (2 persons) x (2,000 hours per year) = 176,000 hours.

Disclosure - Security-Based Swap Transactions between an SBS Dealer and a Non-SBS Dealer Counterparty [232,765 hours]

In addition, we estimate that, on average, the SBS Entities will require one burden hour per security-based swap to evaluate whether more particularized disclosures are necessary for the transaction and to develop the additional disclosures for the contemplated transaction. As stated above, we estimate that in 2020, there were approximately 354,814 security-based swap transactions between an SBS Dealer and a counterparty that is not an SBS Dealer. Of these, we estimate that approximately 232,765 were new or amended trades requiring these disclosures. This amounts to an ongoing reporting burden of 232,765 hours.[13]

- **15fh-3(e) and (f) – Know Your Counterparty and Recommendations**:

As noted in the Proposing Release, the estimates in this paragraph reflect our experience with and burden estimates for similar collections of information, as well as our discussions with market participants.[14]

SBS Dealers [5,610 hours]

We believe that most SBS Dealers already have policies and procedures in place for knowing their counterparties that comply with existing CFTC and FINRA standards, and that they have already incurred any initial one-time burdens associated with reviewing and revising the policies and procedures to comply with the "know your counterparty" obligations under this rule. Going forward, we estimate that an SBS Dealer will spend an average of approximately 30 minutes each year per unique non-SBS Dealer counterparty[15] to assess whether the SBS Dealer is in compliance with the rules' "suitability" requirements under Rule 15fh-3(f)(1) – a total ongoing reporting burden of approximately 5,610 hours annually,[16] or an average of approximately 127.5 hours annually per SBS Dealer.[17]

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13 The estimate is based on the following calculation: (232,765 security-based swaps that require these disclosures) x (1 hour) = 232,765 hours. We realize that some assessments may take less time and some may take more. In addition, to the extent that additional disclosures are required, drafting the disclosure is likely to take more than an hour, but we expect the vast majority of transactions will not require additional disclosures so that an average of one hour per transaction is a reasonable estimate.

14 See Proposing Release 76 FR at 42398, n. 14.

15 Based on 2020 DTCC-TIW data, there were approximately 11,219 unique transacting SBS Dealer - non-SBS dealer pairs.

16 The estimate is based on the following calculation: (11,219 unique transacting SBS Dealer - non-SBS dealer pairs) x (30 minutes) ÷ (60 minutes) = 5,609.5 hours rounded up to 5,610 hours.

17 The estimate is based on the following calculation: (5,610 hours) ÷ (44 SBS Dealers) = 127.5 hours per SBS Dealer. To the extent that the SBS Dealer is unfamiliar with the counterparty, we would expect a greater time burden and as an SBS Dealer becomes more familiar with the particular counterparty, we would expect a lesser time burden. As a result, we use 30 minutes as an average estimate.

Counterparties [0 hours]

Counterparties have already previously incurred initial one-time burdens associated with the counterparty or its agent collecting and providing essential facts to SBS Dealers. Once counterparties provide SBS Dealers with essential facts, we do not anticipate there are any ongoing burdens.

Special Entities [0 hours]

We expect that, given the institutional nature of the participants involved in security-based swaps, most SBS Dealers will obtain the representations in Rule 15fh-3(f)(2) or Rule 15fh-3(f)(3)(ii) to comply with Rule 15fh-3(f).[18] For the estimated 1,542 special entities, we expect they will choose compliance with the safe harbor Rule 15fh-5(b) and accordingly, the burden estimates for the SBS Entities and special entities are included in the context of the discussion for that rule, infra.

Dual Market Participants [0 hours]

For the 11,531 security-based swap market participants that are also swap market participants, including the 41 firms that we expect to be dually registered as Swap Entities and SBS Entities, the requisite representations have already been prepared in the swaps context. [19] We understand that swap market participants are currently utilizing standardized representations that are currently in Schedule 3 of the ISDA August 2012 DF Protocol. Any initial one time burdens associated with adapting these standard representations to the SBS context have already been previously incurred by respondents. After respondents have made the necessary initial modifications to adapt these standard representations to the SBS context, we do not anticipate any ongoing burden with respect to the requisite representations because the representations in the swaps context are deemed repeated "as of the occurrence of each Swap Communication Event" and we would anticipate a similar construction in the security-based swap context.

SBS only Market Participants [0 hours]

The remaining 3,656 market participants not dually registered have already incurred an initial one-time burden to draft the requisite representations to comply with the institutional suitability analysis in Rule 15fh-3(f)(2). We believe that these 3,656 market participants are likely to have modelled their representations on the representations included in the ISDA August 2012 DF Protocol because the SBS Entity is already familiar with those particular representations. Given that there are various industry practices in master documentation for renewing representations or addressing material

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18 We base the expectation on observation and experience in the context of transactions by broker-dealers with institutional clients and the use of FINRA's institutional suitability exception in that context.

19 Of the 11,531 market participants that engage in both swaps and security-based swaps, a proportion of them will also be special entities. This calculation assumes all of the special entities are engaged in transactions in both markets, leaving 9,989 market participants (11,531 market participants – 1,542 special entities) to adapt the representations in the ISDA August 2012 DF Protocol to the security-based swap context, as necessary.

changes to representations made for future actions, as discussed above, we do not believe that there will be an ongoing burden pertaining to these representations.

15fh-3(g) – Fair and Balanced Communications *[88 hours]*

Rule 15fh-3(g) requires SBS Entities to communicate with counterparties "in a fair and balanced manner, based on principles of fair dealing and good faith." The three specific standards of Rule 15fh-3(g) require that: (1) communications must provide a sound basis for evaluating the facts with respect to any security-based swap or trading strategy involving a security-based swap; (2) communications may not imply that past performance will recur, or make any exaggerated or unwarranted claim, opinion, or forecast; and (3) any statement referring to the potential opportunities or advantages presented by a security-based swap or trading strategy involving a security-based swap shall be balanced by an equally detailed statement of the corresponding risks.[20] Rule 15fh-3(g) applies to communications made before the parties enter into a security-based swap, and continues to apply over the term of a security-based swap. We expect that a discussion of material risks of the transaction will be included in the documentation for the security-based swap.

We believe that all 44 SBS Entities are required to comply with Rule 15fh-3(g), and that they have already incurred a one-time initial burden associated with sending their existing marketing materials to outside counsel for review and comment (see discussion of outside counsel costs in Item 13 below). After initial changes to marketing materials have been made to comply with Rule 15fh-3(g), we believe that the ongoing hour burden associated with the rule will likely be limited to two hours pertaining to the review of SBS Entities' e-mail communications and Bloomberg messages sent to counterparties, which we believe will likely be done by in-house counsel or an SBS Entity's CCO. We estimate that the ongoing hour burden of the rule will be approximately two hours per year per SBS Entity, for an aggregate total of 88 hours per year (44 SBS Entities x 2 burden hours).

- **15fh-3(h) – Supervision** *[23,760 hours]*

As outlined above, Rule 15fh-3(h) requires an SBS Entity to establish and maintain a system to supervise, and to diligently supervise, its business and the activities of its associated persons. Such a system shall be reasonably designed to prevent violations of the provisions of applicable federal securities laws and the rules and regulations thereunder relating to its business as an SBS Entity. The written policies and procedures

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[20] We expect 16 registered broker-dealers that are FINRA members to register as SBS Entities. These 16 FINRA members are already subject to these similar FINRA requirements in the non-security based swap context. Cf. FINRA Rule 2210(d)(1)(D) ("Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.") We believe that this requirement addresses concerns raised by a commenter that to be fair and balanced, communications must inform investors of both the potential rewards and risks of their investments. See letter from Carl Levin, U.S. Senate, dated Aug. 29, 2011.

required by Rule 15fh-3(h) must include, at a minimum, procedures for nine specific areas of supervision.

We expect that 44 SBS Entities (of which approximately 41 will be dually registered with the CFTC as Swap Entities) will be required to comply with analogous supervision rules like those required by Rule 15fh-3(h). The supervision requirements in Rule 15fh-3(h) are largely the same under the business conduct standards and related rules adopted by the CFTC.[21]

The estimates in this paragraph reflect the foregoing information, as well as our general experience with and understanding of the burden estimates in similar contexts, including, but not limited to, FINRA's analogous supervision rules. All 44 SBS Entities have already incurred initial one-time burdens to initially prepare policies and procedures. We continue to expect that many SBS Entities will rely primarily on outside counsel for the ongoing collection of information required under this rule and to review each policy and procedure on an ongoing basis as discussed above. We continue to estimate that, on average, each SBS Entity will spend approximately 540 hours (approximately 60 hours per policy and procedure) each year to maintain these policies and procedures, yielding a total ongoing annual burden of approximately 23,760 burden hours annually.[22] We believe that the maintenance of these policies and procedures will be conducted internally.

- **15fh-4 and 15fh-2(a) – SBS Dealers Acting as Advisors to Special Entities**

As discussed above, Rule 15fh-4 imposes on SBS Dealers that act as advisors to special entities a duty to make a reasonable determination that any security-based swap or related trading strategy that the SBS Dealer recommends is in the "best interests" of the special entity. Rule 15fh-2(a) states that an SBS Dealer "acts as an advisor" to a special entity when it recommends a security-based swap or related trading strategy to the special entity. However, the rule provides a safe harbor whereby an SBS Entity will not be deemed an "advisor" if an ERISA special entity counterparty relies on advice from an ERISA fiduciary, or where any special entity counterparty relies on advice from a qualified independent representative that acts in its best interests.[23]

Among swap dealers operating under the CFTC's parallel safe harbor,[24] parties have generally included representations in standard swap documentation that both counterparties are acting as principals, and that the counterparty is not relying on any communication from the swap dealer as investment advice. We believe that SBS Dealers

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21 See CFTC Rule 23.602. See also CFTC Rule 23.402(a) (policies and procedures to ensure compliance); CFTC Rule 3.3(d)(1) (administration of compliance policies and procedures). Accordingly, the SBS Entities that would also be registered as a swap dealer or major swap participant with the CFTC would have supervision policies and procedures for engaging in swaps.

22 The estimate is based on the following calculation: (60 hours) x (9 policies and procedures) x (44 SBS Entities) = 23,760 hours annually.

23 Rule 15fh-2(a)(1)-(2).

24 See CFTC Regulation § 23.440(b)(1)-(2).

and their special entity counterparties will similarly include the requisite representations in standard security-based swap documentation. These representations will need to be reviewed and revised to ensure that they comply with the business conduct standards.

SBS Dealers Acting as Advisors to Special Entities [0 hours]

We believe that the 44 SBS Dealers will primarily rely on in-house counsel for compliance with these rules. The 44 SBS Dealers have already previously incurred an initial one time burden associated with reviewing and revising the representations in their standard security based swap documentation to comply with Rule 15fh-2(a)(1)-(2). We believe that once an SBS Dealer initially has revised the language of the representations to meet the requirements of Rule 15fh-2(a)(1)-(2), such language will become part of the SBS Dealer's standard security-based swap documentation and, accordingly, there will be no further ongoing burden associated with this rule.

SBS Dealers Acting as Advisors to Special Entities (Unique Pairs) [0 hours]

For transactions in which an SBS Dealer is not a counterparty and chooses to act as an advisor, the SBS Dealer will have already previously incurred an initial one time burden associated with collecting the information from each special entity required under the rule.[25] We estimate that once an SBS Dealer has initially collected the requisite information from each special entity, there is no ongoing reporting burden associated with these rules.

- **15fh-5 – SBS Entities Acting as Counterparties to Special Entities**

Where a special entity is a counterparty to a security-based swap, Rule 15fh-5(a)(1) requires an SBS Entity to have a reasonable basis for believing that the special entity has a qualified independent representative that meets specified requirements. Where the special entity counterparty is an ERISA plan, under Rule 15fh-5(a)(2), the SBS Entity must have a reasonable basis to believe that the ERISA plan is represented by an ERISA fiduciary. We believe that written representations will likely provide the basis for establishing an SBS Entity's reasonable belief regarding the qualifications of the independent representative. Rule 15fh-5(b) grants a safe harbor to the SBS entities if they obtain certain representations and information from the special entity. Rule 15fh-5(c) requires the SBS Dealer to make certain disclosures about the capacity in which they are acting with respect to the SBS swap.

As stated in the Proposing Release, we believe that the burden for determining whether an independent representative is independent of the SBS Entity will depend on the size of the independent representative, the size of the SBS Entity, and the volume of transactions with which each is engaged. We further believe that each SBS Entity would initially require written representations regarding the qualifications of a special entity's independent representative, but would only require updates to the independent

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[25] We have estimated approximately 62 unique pairs of SBS Dealers and US special entities without a third-party adviser based on market data provided by DTCC and list of registered SBS Entities, supra n. 4.

representative's qualifications in subsequent dealings with the same independent representative throughout the duration of the swap term, provided the volume and nature of the security-based swap transaction remain the same. The remaining representations and disclosures are easily incorporated into standardized documentation.

SBS Entities Acting as Counterparties to Special Entities (Reporting) [15,488 hours]

Regarding the burden estimates for SBS Entities, our estimates reflect that each SBS Entity will interact with and be required to form a reasonable basis regarding the qualifications of approximately 329 independent, third-party representatives and 23 in-house independent representatives, for a total of 352 independent representatives. Each of the SBS Entities has already previously incurred a one-time initial burden associated with forming a reasonable basis concerning and obtaining written representations regarding the qualifications of each special entity's independent representative.

With regard to SBS Entities' ongoing burden, we believe that such burden would be minimal (1 hour for each SBS Entity per independent representative), since, once an SBS Entity forms a reasonable basis to believe that a given independent representative meets the qualifications of Rule 15fh-5, the SBS Entity would not likely need to reaffirm that independent representative's qualifications anew, but could instead rely on past representations regarding the representative's qualifications. Also, as discussed above, we consider this part of the SBS Entity's overall recordkeeping requirement. We estimate that SBS Entities will incur an ongoing, aggregate reporting burden of 15,488 hours per year as a result of this rule.[26]

SBS Entities Acting as Counterparties to Special Entities (Third-Party Disclosure) [15,488 hours]

In addition to the burdens imposed on SBS Entities, Rule 15fh-5(a)(1) will also impose an ongoing burden on special entities' independent representatives to collect the necessary information regarding their relevant qualifications, and provide that information to the SBS Entity and/or the special entity. We continue to believe that the reporting burden for the independent representative will consist of providing written representations to the SBS Entity and/or the special entity it represents. We believe that the burden associated with an independent representative's obligation to assess its independence from the SBS Entity will likely depend on the size of the independent representative, the size of the SBS Entity, the interactions between the independent representative and the SBS Entity, the policies and procedures of the independent representative and depend less on the number of transactions in which the independent representative is engaged. The policies and procedures of the independent representative will facilitate its ability to quickly assess, disclose, manage and mitigate any potential

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[26] The estimate is based on the following calculation: (1 hour) x (352 independent representatives) = 352 hours per SBS Entity. (44 SBS Entities x 352 hours) = 15,488 hours.

material conflicts of interest. We believe the number of transactions in which the independent representative engages is less likely to impact this assessment.

We anticipate that independent representatives will rely on in-house counsel to collect and submit the relevant documentation and information regarding its qualifications. Each independent representative has already previously incurred a one-time initial burden associated with collecting and submitting the relevant documentation and information regarding its qualifications.

As with SBS Entities' ongoing burden associated with this rule, we believe that the ongoing burden imposed on independent representatives would be minimal (1 hour annually for each SBS Entity per independent representative), since, once the independent representative has provided information regarding its qualifications to the SBS Entity, the independent representative will not likely need to collect or provide that information again, but as discussed above, could instead rely on a bring down of representations as is industry practice that reflects past representations regarding its qualifications. We estimate that independent representatives will incur an ongoing, aggregate burden of 15,488 hours per year as a result of this rule.[27]

- **15fh-6 – Political Contributions** *[44 hours]*

  As noted above, we believe that there will be approximately 44 SBS Dealers subject to these rules, and estimate that all of them will provide, or will seek to provide, security-based swap services to municipal entities. SBS Dealers, in order to supervise and assess internal compliance with Rule 15fh-6, will need to collect information regarding the political contributions of SBS Dealers and their covered associates. In addition, SBS Dealers' covered associates will also need to collect and provide the information required by Rule 15fh-6 to SBS Dealers.

  Our estimates in this paragraph take into account the burden of the covered associates and the SBS Dealers. These estimates also reflect our experience with and burden estimates for similar requirements, as well as our discussions with market participants. We believe that all SBS Dealers will primarily rely on in-house counsel for the collection of information required under this rule and that all SBS Dealers and covered associates will already have incurred one-time initial burdens to comply with the rule. Thereafter, we estimate the rule would require one burden hour per SBS Dealer per year on an ongoing basis for an aggregate burden of 44 hours per year.

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[27] The estimate is based on the following calculation: (1 hour) x (352 independent representatives) = 352 hours per SBS Entity. (44 SBS Entities) x (352 hours) = 15,488 hours. We note that, in the Proposing Release, we based our burden estimates for evaluating an independent representative's qualifications on the underlying assumption that representations regarding an independent representative's qualifications must be provided prior to every transaction, and therefore the associated burden calculations were transaction-specific. See Proposing Release, 76 FR 42446-7. However, based on the observed practices of swap market participants, we now believe that representations regarding an independent representative's qualifications need only be provided in the context of each relationship with an SBS Entity. Our revised calculations, which are now relationship-specific, reflect this shift in our underlying assumption.

- **15fk-1 – Chief Compliance Officer** *[12,012 hours]*

  Under Rule 15fk-1, an SBS Entity's CCO is responsible for, among other things, taking reasonable steps to ensure that the SBS Entity establishes and maintains policies and procedures reasonably designed to ensure compliance by the SBS Entity with the Exchange Act and the rules and regulations thereunder relating to its business as an SBS Entity. Each SBS Entity has already previously incurred a one-time initial burden associated with establishing the policies and procedures. We continue to estimate that, on average, ongoing administration of the policies and procedures required under Rule 15fk-1 (*e.g.*, the SBS Entity's annual assessment of its written policies and procedures reasonably designed to achieve compliance with Section 15F and the rules and regulations thereunder) will require 180 hours to administer per year per respondent, for a total average reporting burden of 7,920 hours per year,[28] on an ongoing basis.[29]

  A CCO will also be required to prepare and submit annual compliance reports to the Commission and to the SBS Entity's board of directors, the audit committee (or equivalent body), and the senior officer of the SBS Entity prior to submission to the Commission.[30] We continue to estimate that these reports will require on average 93 hours per respondent per year, for an ongoing annual reporting burden of 4,092.[31]

  The total aggregate CCO related burden is thus 12,012 hours per year (7,920 hours + 4,092 hours) and the annual related burden per SBS Entity is 273 hours.

PROPOSED PARTIAL REVISION: New Burdens Associated with the 2023 Proposed Amendments to Rule 15fk-1(c)

- **15fk-1(c) – Chief Compliance Officer**

  The current estimated annual industry-wide time burden is 12,012 hours, and we are proposing to revise it to 13,725 hours in the initial year of compliance with the amendment to Rule 15fk-1 and 13,700 hours in subsequent years. This incorporates the previously estimated time burden of 180 hours per year per respondent (which is not being altered by the proposed changes) to complete the annual assessment of a SBS Entity's written policies and procedures reasonably designed to achieve compliance with Section 15F and the rules and regulations thereunder. The total average reporting burden for the industry for this requirement would be 9,000 hours, up from the previously estimated 7,920 hours.[32]

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28 The estimate is based on the following calculation: (44 SBS Entities) x (180 hours) = 7,920 hours.

29 See Proposing Release, 76 FR at 42448.

30 This language was altered from its previous version to reflect that the report must be submitted to the board of directors and the audit committee (or equivalent bodies) and senior officers of the SBS Entity prior to submission, not just the SBS Entity's board of directors.

31 The estimate is based on the following calculation: (93 hours) x (44 SBS Dealers) = 4,092 hours.

32 The annual aggregate burden hour estimate for ongoing annual assessment of registrants' written policies is based on the following calculation: (180 hours) x (50 SBS Entities) = 9,000 hours.

A CCO will be required to prepare and submit annual compliance reports to the Commission and the SBS Entity's board of directors, the audit committee (or equivalent body), and the senior officer of the SBS Entity prior to submission to the Commission. The Commission estimates that no SBS Entities would be first-time EDGAR users needing to obtain EDGAR access credentials. Thus, the internal time burden associated with completing a Form ID (OMB Control No. 3235-0328) application to gain access to EDGAR would not apply to SBS Entities. Although the information to be included in the CCO report pursuant to Rule 15fk-1(c)(2)(ii)(A) would not change, the proposed amendment would require respondents to submit the CCO report electronically with the Commission through EDGAR in Inline XBRL.[33]

- **Initial Burden for electronic submission** *[Proposed to be revised from 0 to 13,725 hours]*[34]

SBS Entities would incur a burden to submit the CCO report in Inline XBRL. Because the CCO reports consist of a limited number of textual narrative sections (compared to the various sets of numerical values that comprise financial statements, which take significantly longer to tag), the Commission estimates that, on average, an SBS Entity would spend 1.5 internal burden hours to tag its CCO report in Inline XBRL in the initial year of compliance. Accordingly, the Commission estimates that the total burden associated with compliance with Rule 15fk-1(c) would be an annual hour burden of 94.5 hours per respondent in the initial year, yielding an industry-wide burden of 4,725 hours in the first year.[35] The total aggregate CCO related burden is thus 13,700 hours per year (9,000 hours + 4,700 hours) and the annual related burden per SBS Entity is 274.5 hours in the initial year.[36]

- **Ongoing Burden** *[Proposed to be revised from 12,012 to 13,700 hours]*[37]

SBS Entities would incur a burden to submit the CCO report in Inline XBRL. Because the CCO reports consist of a limited number of textual narrative sections (compared to the various sets of numerical values that comprise financial statements, which take significantly longer to tag), the Commission estimates that, on average, an SBS Entity would spend 1 internal burden hour to tag its CCO report in Inline in subsequent years of compliance. Accordingly, the Commission estimates that the total burden associated with compliance with Rule 15fk-1(c) would be an annual hour burden of 94 hours per respondent in subsequent years of compliance, yielding an industry-wide annual burden

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33 The estimate for initial year time burden will be altered in the next full renewal of the PRA for the Business Conduct Standards in 2025 to reflect that only new registrants will incur this burden. The 50 SBS entities currently registered will have already incurred the initial year time burden.

34 The previously approved time burden corresponds to an estimated 44 SBS Entities, while the newly proposed time burden is based off the actual 50 SBS Entities currently registered with the Commission.

35 The annual aggregate burden hour estimate for the initial year of compliance is based on the following calculation: (93 hours + 1.5 hours) x (50 SBS Entities) = 4,725 hours. The annual aggregate burden hour estimate for the subsequent years of compliance is based on the following calculation: (93 hours + 1 hours) x (50 SBS Entities) = 4,700 hours.

36 The total industry-wide time burden would be 13,725 hours (50 SBS Entities x 274.5 hours).

37 The previously approved time burden corresponds to an estimated 44 SBS Entities, while the newly proposed time burden is based off the actual 50 SBS Entities currently registered with the Commission.

of 4,700 hours in subsequent years.[38] The total aggregate CCO related burden is thus 13,700 hours per year (9,000 hours + 4,700 hours) and the annual related burden per SBS Entity is an ongoing total burden of 274 hours per year per SBS Entity.[39]

13. Costs to Respondents

Currently Approved Costs: The Commission estimates that the aggregate cost burden of the ongoing reporting and disclosures required by the BCS Rules, as described above, is approximately $1,812,800, calculated as follows:

- **15fh-3(a) – Verification of Status:** As discussed in Item 12, SBS Entities have already undertaken to comply with the verification of status requirements. In addition, the Commission acknowledges that the parties may utilize industry practice and protocols in the initial master agreement documentation, to bring down or refresh representations and address material changes. Thus, once the initial compliance is completed, we consider ongoing events part of the overall SBS Entities' books and recordkeeping requirements and we do not anticipate any ongoing cost burdens.

SBS Entities – Adherence Letter [$0]

As indicated above, any initial one-time costs associated with this rule have already been previously incurred and we do not anticipate any ongoing cost burdens with respect to this rule.

SBS Market Participants – Adherence Letter [$0]

As noted above, we believe that approximately 11,531 of the 15,187 security-based swap market participants (which include SBS Entities and counterparties) are also swap market participants and likely already adhere to the relevant protocol and the remaining SBS market participants will already have come into compliance. Thereafter, for both categories of market participants, we do not anticipate any ongoing cost burdens with respect to this rule.

SBS Entities – Notice, etc. [$0]

The 44 SBS Entities would have previously incurred one time initial cost burdens in connection with preparing the required notice under Rule 15fh-3(a)(3) for counterparties defined in Rule 15fh-2(d)(4) and we anticipate would not have any ongoing cost burdens with respect to this rule.

Counterparties – Representations [$0]

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38 The annual aggregate burden hour estimate for the initial year of compliance is based on the following calculation: (93 hours + 1.5 hours) x (50 SBS Entities) = 4,725 hours. The annual aggregate burden hour estimate for the subsequent years of compliance is based on the following calculation: (93 hours + 1 hours) x (50 SBS Entities) = 4,700 hours.

39 The total industry-wide time burden would be 13,725 hours (50 SBS Entities x 274.5 hours).

As discussed in Item 12 above, the Adopting Release states SBS Entities and counterparties may follow industry practice and agree in master agreement documentation as to the required representations, how to address material changes and or refresh such representations by "bring down" or renewing for subsequent actions. Once the initial diligence is conducted and counterparty representations are made, we consider this part of the overall SBS Entity books and recordkeeping requirements. Therefore, for counterparties, we do not anticipate any ongoing cost burdens with respect to this rule.

- **15fh-3(g) – Fair and Balanced Communications** *[$158,400*]

We believe that all 44 SBS Entities are required to comply with Rule 15fh-3(g) and that they have already incurred an initial one-time cost associated with sending their existing marketing materials to outside counsel for review and comment. After these initial costs have been incurred, we believe that each SBS Entity will likely incur $1200 per year in legal costs thereafter ($52,800 per year in the aggregate for all SBS Entities) for outside counsel to draft or review statements of potential opportunities and corresponding risks in the marketing materials for single name and narrow based index credit default swaps, total return swaps and other security-based swaps.[40]

For more bespoke transactions, however, the cost for outside counsel to review the marketing materials will depend on the complexity, novelty and nature of the product, but we expect a higher cost associated with the review for more novel products. We accordingly estimate an ongoing, annual cost for the outside review of marketing materials relating to bespoke single name and narrow based index credit default swaps, total return swaps and other security-based swaps of $2,400 per SBS Entity ($105,600 per year in the aggregate for all SBS Entities).[41]

Thus, we estimate that each of the 44 SBS Entities will incur $3,600 per year in total outside legal costs for an annual aggregate cost of $158,400 for all respondents.

We additionally believe that compliance with Rule 15fh-3(g) would require a review of SBS Entities' other communications to their counterparties, such as e-mails and Bloomberg messages. However, as discussed in Section 12 above, we believe that such additional communications would likely be reviewed internally by in-house legal counsel or an SBS Entity's CCO.

- **15fh-3(h) – Supervision** *[$211,200]*

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40 We estimate that the review of marketing materials for these three categories of security-based swaps would require 1 hour of outside counsel time, at an average cost of $400 per hour. This estimate also assumes that each SBS Entity engages in all three categories of security-based swaps. The estimate is based on the following calculation: (1 hour) x ($400 per hour) x (3 categories) = $1,200 per SBS Entity. (44 SBS Entities) x ($1,200) = $52,800.

41 We estimate the review of the marketing materials for each of these categories would require two hours of outside counsel time at a cost of $400 per hour. This estimate also assumes that each SBS Entity engages in all three categories of transactions. The estimate is based on the following calculation: 2 hours x $400 per hour x 3 = $2,400 per SBS Entity. (44 SBS Entities) x ($2,400) = $105,600.

As discussed in Item 12 above, Rule 15fh-3(h) requires an SBS Entity to establish and maintain a system to supervise, and to diligently supervise, its business and the activities of its associated persons. All 44 SBS Entities have already incurred initial one-time costs to prepare policies and procedures. Once these policies and procedures have been established, we expect that many SBS Entities will primarily rely on outside counsel for the collection and review of information required under this rule at a rate of $400 per hour, for an average of 12 hours per respondent per year, resulting in an outside ongoing cost burden of $4,800 per respondent – or an aggregate ongoing cost of $211,200.[42]

- **15fh-6 – Political Contributions** *[$1,126,400]*

We believe that there will be approximately 44 SBS Dealers subject to these rules, and estimate that all of them will provide, or will seek to provide, security-based swap services to municipal entities. SBS Dealers, in order to supervise and assess internal compliance with the pay to play rules, will need to collect information regarding the political contributions of SBS Dealers and their covered associates. In addition, SBS Dealers' covered associates will also need to collect and provide the information required by these rules to SBS Dealers. All SBS Dealers and covered associates have already incurred one-time initial costs to comply with these rules. Once the initial supervision and information collection process has been established and managed by in-house counsel, we estimate there will be no ongoing cost burdens.

The rules also allow SBS Dealers to file applications for exemptive relief, and outline a list of items to be addressed, including, whether the SBS Dealer has developed policies and procedures to monitor political contributions; the steps taken after discovery of the contribution; and the apparent intent in making the contribution based on the facts and circumstances of each case. The incidence of exemptive relief related to MSRB Rule G-37 and the number of applications we have received under the Advisers Act Rule 206(4)-5 may be indicative of the possible applications for exemptive relief under these rules. We also estimate that a firm that applies for an exemption will hire outside counsel to prepare an exemptive request, and estimate that the number of hours counsel will spend preparing and submitting an application will be from 16 to 32 hours, at a rate of $400 per hour. Recognizing that this is an estimate, we conservatively estimate that we may receive up to two applications for exemptive relief per year with respect to pay to play rules,[43] at a total ongoing cost of $25,600 per year per SBS Dealer and $1,126,400 per

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42 Some SBS Entities may choose to utilize in-house counsel to prepare these policy and procedure, which would mitigate the aggregate cost, but the estimate of $264,000 reflects a conservative assumption of SBS Entities primarily relying on outside counsel to review these materials on an ongoing basis. The estimate is based on the following calculation: (12 hours) x ($400 per hour) = $4,800 per SBS Entity. (44 SBS Entities) x ($4,800) = $211,200.

43 FINRA has granted 21 exemptive letters related to Rule G-37 between 1/05 and 12/18 (14 years) http://www.finra.org/industry/exemptive-letters. In addition, the Commission has received 15 applications under the Adviser's Act (since the compliance date, approximately 7 years).

year for all 44 SBS Dealers, assuming conservatively 32 hours for outside counsel to prepare an exemptive request.[44] This is an ongoing cost for all SBS Dealers.[45]

- **15fk-1 – Chief Compliance Officer** *[$316,800]*

Under Rule 15fk-1, an SBS Entity's CCO is responsible for, among other things, taking reasonable steps to ensure that the SBS Entity establishes and maintains policies and procedures reasonably designed to ensure compliance by the SBS Entity with the Exchange Act and the rules and regulations thereunder relating to its business as an SBS Entity. Each SBS Entity has already incurred a one-time initial cost burden associated with establishing the policies and procedures. We estimate that an annual total of $7,200 per SBS Entity in outside legal costs will be incurred to, among other things, assist in the preparation of the annual compliance report and the SBS Entity's annual assessment of its written policies and procedures, for an aggregate ongoing outside cost burden of $316,800.[46]

2023 Proposed Amendment

- **15fk-1 – Chief Compliance Officer**

The Commission recognizes that the proposed amendments to Rule 15fk-1(c) may potentially impose certain burdens on respondents. Although the information to be included in the CCO report pursuant to Rule 15fk-1(c) would not change, the proposed amendment would require respondents to submit the CCO report electronically with the Commission through EDGAR in Inline XBRL.[47]

  - **Initial Burden for electronic submission** *[Proposed to be revised from $0 to $390,000][48]*

SBS Entities would incur an external cost to submit the CCO report in Inline XBRL. Because the CCO reports consist of a limited number of textual narrative sections (compared to the various sets of numerical values that comprise financial statements, which take significantly longer to tag), the Commission estimates that, on average, an SBS Entity would spend $600 in external costs (e.g., the cost to license and renew Inline XBRL compliance software and/or services) to tag its CCO report in Inline XBRL in the

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44 Ongoing: (Outside counsel at $400 per hour) x (32 hours per application) x (2 applications) = $25,600. See Advisers Act Pay-to-Play Release, 75 FR at 41065 (making similar estimates in connection with Advisers Act Rule 206(4)-5).

45 The estimate is based on the following calculation: (44 SBS Dealers) x ($25,600) = $1,126,400.

46 See id. This figure is the result of an estimated $400 per hour cost for outside legal services times 6 hours for 3 policies and procedures for 44 respondents. The estimate is based on the following calculation: (6 hours) x ($400 per hour) x (3 policies) = $7,200 per SBS Entity. (44 SBS Entities) x ($7,200) = $316,800.

47 The estimate for initial year external cost will be altered in the next full renewal of the PRA for the Business Conduct Standards in 2025 to reflect that only new registrants will incur this burden. The 50 SBS entities currently registered will have already incurred the initial year external cost burden.

48 The previously approved external cost burden corresponds to an estimated 44 SBS Entities, while the newly proposed external cost burden (for both the initial year of compliance and for subsequent years) reflects that there are 50 SBS Entities currently registered with the Commission.

initial year of compliance. We estimate that an annual total of $7,800 per SBS Entity in outside legal costs will be incurred in the initial year of compliance to, among other things, assist in the preparation of the annual compliance report and the SBS Entity's annual assessment of its written policies and procedures, for an aggregate ongoing outside cost burden of $390,000.[49]

- **Ongoing Burden Cost** *[Proposed to be revised from $316,800 to $380,000]*[50]

SBS Entities would incur an external cost to submit the CCO report in Inline XBRL. Because the CCO reports consist of a limited number of textual narrative sections (compared to the various sets of numerical values that comprise financial statements, which take significantly longer to tag), the Commission estimates that, on average, an SBS Entity would spend $400 in external costs (e.g., the cost to license and renew Inline XBRL compliance software and/or services) to tag its CCO report in Inline XBRL in subsequent years of compliance.

We estimate that an annual total of $7,600 per SBS Entity in outside legal costs will be incurred in subsequent years of compliance to, among other things, assist in the preparation of the annual compliance report and the SBS Entity's annual assessment of its written policies and procedures, for an aggregate ongoing outside cost burden of $380,000.[51]

SUMMARY OF HOUR AND COST BURDENS

Section		Type of Burden	Respondents	Ongoing Annual Burden	Ongoing Annual Burden	Industry-wide Annual Burden	Industry-wide Annual Burden
				Hours	Cost	Hours	Cost
15fh-3(b), (c), (d)	**Disclosures - SBS Entities**	Reporting	44	4,120	$0	181,280	$0
15fh-3(b), (c), (d)	**Disclosures - SBS Transactions Between SBS Dealer and Non-SBSD Counterparty**	Reporting	232,765	1	$0	232,765	$0
15fh-3(e), (f)	**Know Your Counterparty and Recommendations (SBS Dealers)**	Reporting	44	127.5	$0	5,610	$0
15fh-3(g)	**Fair and Balanced Communications**	Reporting	44	2	$3,600	88	$158,400
15fh-3(h)	**Supervision**	Reporting	44	540	$4,800	23,760	$211,200

49 This figure is a result of the previously approved ongoing external cost of $7,200 plus $600 in additional ongoing external costs to comply with Rule 15fk-1(c)(2)(ii)(A). The calculation of total annual industry burden is as follows: (50 SBS Entities) x ($7,800) = $390,000. The aggregate industry-wide cost in the first year of compliance would be $390,000.

50 This figure is a result of the previously approved ongoing external cost of $7,200 plus $400 in additional ongoing external costs to comply with Rule 15fk-1(c)(2)(ii)(A). The calculation of total annual industry burden is as follows: (50 SBS Entities) x ($7,600) = $380,000.

51 *See supra* n. 50.

Section		Type of Burden	Respondents	Ongoing Annual Burden	Ongoing Annual Burden	Industry-wide Annual Burden	Industry-wide Annual Burden
15fh-5	**SBS Entities Acting as Counterparties to Special Entities**	Reporting	44	352	$0	15,488	$0
15fh-5	**SBS Entities Acting as Counterparties to Special Entities**	Third-Party Disclosure	44	352	$0	15,488	$0
15fh-6	**Political Contributions**	Reporting	44	1	$25,600	44	$1,126,400
15fk-1 (initial burden for electronic submission)	**Chief Compliance Officer**	Reporting	50	0.5	$200	25	$10,000
15fk-1 (ongoing burden)	**Chief Compliance Officer**	Reporting	50	274	$7,600	13,700	$380,000
					Total hours/cost	**488,248**	**1,886,000**

14. Cost to Federal Government

Commission staff estimates that there is no annual cost associated with information submitted to the Commission under the new rules, other than the cost of full-time employee labor costs.

15. Explanation of Changes in Burden

2023 Proposed Rule 15fk-1 Amendment

As stated in items 12 and 13 above, the amendment proposed by Rule 15fk-1(c)(2)(ii)(A) will annually impose an estimated 0.5 hour additional time burden and $200 external cost per respondent in the initial year and a 1 hour additional time burden and $400 external cost per respondent in subsequent years. Total SBS industry changes in time burden and external costs are detailed in the below chart.

Rule	Previously Approved Burden	Proposed Burden	Increase in Burden	Reason for Change
15fk-1--Chief Compliance Officer (initial burden for electronic submission)	0 hours $0 cost	25 hours $10,000 cost	25 hours $10,000 cost	The proposed amendment to require the CCO report to be filed electronically on EDGAR would impose a new initial hour and cost burdens.
15fk-1--Chief Compliance Officer (ongoing burden)	12,012 hours $316,800 cost	13,700 hours $380,000 cost	1,688 hours $63,200 cost	The proposed amendment to require the CCO report be filed electronically on EDGAR would increase the ongoing hour and cost burdens. We also updated the number of respondents from 44 to 50.

16. Information Collection Planned for Statistical Purposes

Not applicable. The Commission does not publish information collected pursuant to the Rules.

17. Approval to Omit OMB Expiration Date

We request authorization to omit the expiration date on the electronic version of the form, although the OMB control number will be displayed. Including the expiration date on the electronic version of this form will result in increased costs, because the need to make changes to the form 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. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.