

SECURITIES AND EXCHANGE COMMISSION

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Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: In accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), the Securities and Exchange Commission (“Commission”), pursuant to the Securities Exchange Act of 1934 (“Exchange Act”), is adopting recordkeeping, reporting, and notification requirements applicable to security-based swap dealers (“SBSDs”) and major security-based swap participants (“MSBSPs”), securities count requirements applicable to certain SBSDs, and additional recordkeeping requirements applicable to broker-dealers to account for their security-based swap and swap activities. The Commission also is making substituted compliance available with respect to recordkeeping, reporting, and notification requirements under Section 15F of the Exchange Act and the rules thereunder.

DATES: *Effective date:* February 14, 2020.

Compliance date: The compliance dates are discussed in section III.B. of this release.

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SUPPLEMENTARY INFORMATION:

Table of Contents

- I. BACKGROUND
- II. FINAL RULES AND RULE AMENDMENTS
 - A. Recordkeeping
 - 1. Introduction
 - 2. Records to be Made and Kept Current
 - 3. Record Maintenance and Preservation Requirements
 - B. Reporting
 - 1. Introduction
 - 2. Periodic Filing of FOCUS Report
 - 3. Filing of Annual Audited Financial Reports and Other Reports
 - C. Notification
 - 1. Introduction
 - 2. Amendments to Rule 17a-11 and New Rule 18a-8
 - 3. Additional Amendments to Rule 17a-11 and Modifications to Rule 18a-8.
 - D. Quarterly Securities Count and Capital Charge for Unresolved Securities Differences
 - 1. Introduction
 - 2. Rule 18a-9
 - E. Alternative Compliance Mechanisms
 - 1. Limited Alternative Compliance Mechanism - Rules 17a-3 and 18a-5
 - 2. Full Alternative Compliance Mechanism - Rule 18a-10
 - F. Cross-Border Application and Availability of Substituted Compliance
 - 1. Cross-Border Application of Recordkeeping and Reporting Requirements
 - 2. Availability of Substituted Compliance in Connection with Recordkeeping and Reporting Requirements
 - G. Amendments to Rule 18a-1
 - H. Delegation of Authority
- III. EXPLANATION OF DATES
 - A. Effective Date
 - B. Compliance Date
 - C. Effect on Existing Commission Exemptive Relief
 - D. Application to Substituted Compliance
- IV. PAPERWORK REDUCTION ACT
 - A. Summary of Collections of Information under the Rule Amendments and New Rules
 - 1. Amendments to Rule 17a-3 and New Rule 18a-5
 - 2. Amendments to Rule 17a-4 and New Rule 18a-6
 - 3. Amendments to Rule 17a-5 and New Rule 18a-7
 - 4. Amendments to Rule 17a-11 and New Rule 18a-8
 - 5. Amendments to Rule 17a-12
 - 6. New Rule 18a-9
 - 7. Amendments to Rule 18a-10
 - 8. Amendments to Rule 3a71-6
 - B. Use of Information
 - C. Respondents
 - D. Total Initial and Annual Recordkeeping and Reporting Burden
 - 1. Amendments to Rule 17a-3 and New Rule 18a-5
 - 2. Amendments to Rule 17a-4 and New Rule 18a-6
 - 3. Amendments to Rule 17a-5 and New Rule 18a-7
 - 4. Amendments to Rule 17a-11 and New Rule 18a-8
 - 5. Amendments to Rule 17a-12
 - 6. New Rule 18a-9
 - 7. Amendments to Rule 18a-10
 - 8. Amendments to Rule 3a71-6
 - E. Collection of Information Is Mandatory

- F. Confidentiality
- G. Retention Period for Recordkeeping Requirements
- V. ECONOMIC ANALYSIS
 - A. Introduction
 - B. Baseline of Economic Analysis
 - 1. Available Data from the Security-Based Swap Market
 - 2. Security-Based Swap Market: Market Participants and Activity
 - 3. Existing Regulation of OTC Derivatives Market Participants and Broker-Dealers
 - C. Analysis of the Adopted Program and Alternatives
 - 1. Benefits of Recordkeeping, Reporting, Notification, and Securities Count Requirements
 - 2. Costs of the Recordkeeping, Reporting, Notification, and Securities Count Requirements
 - 3. Economic Effects of the Approach to Recordkeeping, Reporting, Notification, and Securities Count Requirements
 - 4. Cross-Border Application and Substituted Compliance
 - D. Impact on Efficiency, Competition, and Capital Formation
 - E. Alternatives to the Adopted Recordkeeping, Reporting, Notification, and Securities Count Rules
- VI. OTHER MATTERS
- VII. REGULATORY FLEXIBILITY ACT CERTIFICATION
- VIII. STATUTORY BASIS

I. BACKGROUND

Title VII of the Dodd-Frank Act (“Title VII”) established a new regulatory framework for the U.S. over-the-counter (“OTC”) derivatives markets.¹ Section 764 of the Dodd-Frank Act added Section 15F to the Exchange Act.² Section 15F(f)(2) provides that the Commission shall adopt rules governing reporting and recordkeeping for SBSDs and MSBSPs. Section 15F(f)(1)(A) provides that SBSDs and MSBSPs shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the SBSD or MSBSP. Section 15F(f)(1)(B)(ii) provides that SBSDs and MSBSPs without a prudential regulator³ (respectively, “nonbank SBSDs” and “nonbank MSBSPs”) shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation.⁴ Section 15F(f)(1)(B)(i) provides that SBSDs and MSBSPs for which there is a prudential regulator (respectively, “bank SBSDs” and “bank MSBSPs”) shall keep books and records of all activities related to their business as an SBSD or MSBSP in such form and manner and for such period as may be prescribed by the Commission by rule or regulation. Section 15F(g) of the Exchange Act requires SBSDs and MSBSPs to

¹ See Pub. L. 111-203, 701 through 774. The Dodd-Frank Act assigns primary responsibility for the oversight of the U.S. OTC derivatives markets to the Commission and the Commodity Futures Trading Commission (“CFTC”). The Commission has oversight authority with respect to a “security-based swap” as defined in Section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)), including to implement a registration and oversight program for a “security-based swap dealer” as defined in Section 3(a)(71) and a “major security-based swap participant” as defined in Section 3(a)(67). The CFTC has oversight authority with respect to a “swap” as defined in Section 1(a)(47) of the Commodity Exchange Act (“CEA”) (7 U.S.C. 1(a)(47)), including to implement a registration and oversight program for a “swap dealer” as defined in Section 1(a)(49) of the CEA (7 U.S.C. 1(a)(49)) and a “major swap participant” as defined in Section 1(a)(33) of the CEA (7 U.S.C. 1(a)(33)). The Commission and the CFTC jointly have adopted rules to further define these terms *See Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement;” Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48208 (Aug. 13, 2012); *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,”* Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012).

² 15 U.S.C. 78o-10 (“Section 15F of the Exchange Act” or “Section 15F”).

³ The term “prudential regulator” is defined in Section 1(a)(39) of the CEA (7 U.S.C. 1(a)(39)) and that definition is incorporated by reference in Section 3(a)(74) of the Exchange Act. Pursuant to the definition, the Board of Governors of the Federal Reserve System (“Federal Reserve”), the Office of the Comptroller of the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”), the Farm Credit Administration, or the Federal Housing Finance Agency (collectively, the “prudential regulators”) is the “prudential regulator” of an SBSD, MSBSP, swap dealer, or major swap participant if the entity is directly supervised by that agency.

⁴ A nonbank SBSD or MSBSP could be dually registered with the Commission as a broker-dealer (respectively, a “broker-dealer SBSD” or “broker-dealer MSBSP”) or registered with the Commission only as an SBSD or MSBSP (respectively, a “stand-alone SBSD” or “stand-alone MSBSP”). Any of these registrants or a bank SBSD or bank MSBSP also could register with the CFTC as a futures commission merchant (“FCM”), swap dealer, or major swap participant.

maintain daily trading records with respect to security-based swaps and provides that the Commission shall adopt rules governing daily trading records for SBSDs and MSBSPs. Finally, Section 15F(i)(2) of the Exchange Act provides that the Commission shall adopt rules governing documentation standards for SBSDs and MSBSPs.

Section 17(a)(1) of the Exchange Act provides the Commission with authority to adopt rules requiring broker-dealers – which would include broker-dealer SBSDs and MSBSPs – to make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.⁵ The Commission anticipates that a number of broker-dealers will register as SBSDs.⁶ The Commission expects that some broker-dealers that are not registered as SBSDs or MSBSPs (“stand-alone broker-dealers”) nonetheless will engage in security-based swap and swap activities.⁷

In April 2014, the Commission proposed recordkeeping, reporting, and notification requirements applicable to SBSDs and MSBSPs, securities count requirements applicable to certain SBSDs, and additional recordkeeping requirements applicable to broker-dealers to account for their security-based swap and swap activities.⁸ The proposed requirements were modeled on existing broker-dealer requirements.⁹ The

⁵ See 15 U.S.C. 78q(a)(1) (“Section 17 of the Exchange Act” or “Section 17”). Section 771 of the Dodd-Frank Act states that unless otherwise provided by its terms, Subtitle B of Title VII (relating to the regulation of the security-based swap markets) does not divest any appropriate Federal banking agency, the Commission, the CFTC, or any other Federal or State agency, of any authority derived from any other provision of applicable law.

⁶ While it is anticipated that some broker-dealers and banks will register as SBSDs in order to engage in security-based swap activities, it is unclear whether broker-dealers or banks will register as MSBSPs.

⁷ In this release, the term “broker-dealer” includes an OTC derivatives dealer unless otherwise noted. See 17 CFR 240.3b-12 (defining the term “OTC derivatives dealer”). Consequently, the terms “stand-alone broker-dealer,” “broker-dealer SBSD,” and “broker-dealer MSBSP” include entities that are OTC derivatives dealers unless otherwise noted.

⁸ See *Recordkeeping and Reporting Proposing Release; Capital Rule for Certain Security-Based Swap Dealers*, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194 (May 2, 2014) (“*Recordkeeping and Reporting Proposing Release*”).

⁹ See *id.* at 25196-97 (providing the rationale for modeling the proposed requirements on the relevant broker-dealer requirements).

Commission received a number of comments in response to these proposals.¹⁰ Separately, the Commission proposed rules governing the cross-border treatment of recordkeeping and reporting requirements with respect to SBSDs and MSBSPs.¹¹ The Commission received comments in response to these cross-border proposals as well.¹² The Commission carefully considered the comments received on the proposals described above and, as discussed below, made modifications in light of the comments in crafting final rules and amendments.

In this document, the Commission is amending certain existing rules and adopting new rules. In particular, the Commission is amending existing rules 17 CFR 240.17a-3 (“Rule 17a-3”), 17 CFR 240.17a-4 (“Rule 17a-4”), 17 CFR 240.17a-5 (“Rule 17a-5”), and 17 CFR 240.17a-11 (“Rule 17a-11”), and adopting new rules 17 CFR 240.18a-5 (“Rule 18a-5”), 17 CFR 240.18a-6 (“Rule 18a-6”), 17 CFR 240.18a-7 (“Rule 18a-7”), 17 CFR 240.18a-8 (“Rule 18a-8”), and 17 CFR 240.18a-9 (“Rule 18a-9”). The amendments and new rules establish recordkeeping, reporting, and notification requirements for SBSDs and MSBSPs and securities count requirements for stand-alone SBSDs (collectively “recordkeeping and reporting requirements”). The amendments to Rules 17a-3 and 17a-4 also establish additional recordkeeping requirements applicable to stand-alone broker-dealers to the extent they engage in security-based swap or swap activities. The Commission also is adopting largely technical amendments to Rules 17a-3, 17a-4, 17a-5, and 17a-11 as well as a conforming amendment to existing rule 17 CFR 240.17a-12 (“Rule 17a-12”).¹³ Further, the Commission is adopting amendments to Parts II and III of the Financial and Operational Combined Uniform Single Report (“FOCUS Report”),¹⁴ and adopting Part IIC of the FOCUS Report. Part II of the FOCUS Report, as amended, and Part IIC of the FOCUS Report, as adopted, will be used by registrants to report financial and operational

¹⁰ The comment letters are available at <https://www.sec.gov/comments/s7-05-14/s70514.shtml>.

¹¹ *See Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants*, Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968 (May 23, 2013) (“*Cross-Border Proposing Release*”).

¹² The comment letters are available at <https://www.sec.gov/comments/s7-02-13/s70213.shtml>.

¹³ The amendments to Rule 17a-12 replace the phrase “Part IIB” with the phrase “Part II” each time it appears in the rule, thereby requiring OTC derivatives dealers to file FOCUS Report Part II, as amended, instead of FOCUS Report Part IIB.

¹⁴ The FOCUS Report is also known as Form X-17A-5.

information. Part III of the FOCUS Report will accompany the annual reports that certain of the registrants will file. The Commission also is amending existing rule 17 CFR 240.3a71-6 (“Rule 3a71-6”) with respect to the cross-border application of the recordkeeping and reporting rules and the availability of substituted compliance.

On June 21, 2019, the Commission adopted, among other requirements, capital and margin requirements for nonbank SBSDs and MSBSPs and segregation requirements for SBSDs.¹⁵ As discussed below, these capital, margin, and segregation requirements are integrated into the recordkeeping and reporting requirements being adopted in this document. Moreover, at the same time that the Commission adopted the capital, margin, and segregation requirements, the Commission adopted an alternative compliance mechanism (17 CFR 240.18a-10 “Rule 18a-10”).¹⁶ The Commission is amending Rule 18a-10 in this document to incorporate recordkeeping and reporting requirements into its provisions. The Commission also is amending an SBSD capital rule (17 CFR 240.18a-1 “Rule 18a-1”).

The Commission staff consulted with staff from the prudential regulators and the CFTC in drafting these final rules and amendments.¹⁷ In addition, relevant CFTC rules were considered as part of this rulemaking effort.¹⁸

II. FINAL RULES AND RULE AMENDMENTS

A. Recordkeeping

1. Introduction

The Commission is adopting a recordkeeping program for SBSDs and MSBSPs under Sections 15F and 17(a) of the Exchange Act that is modeled on the recordkeeping requirements for broker-dealers as set forth in

¹⁵ See *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers*, Exchange Act Release No. 86175 (Jun. 21, 2019), 84 FR 43872 (Aug. 22, 2019) (“*Capital, Margin, and Segregation Adopting Release*”).

¹⁶ See *Capital, Margin, and Segregation Adopting Release* at 43943-46.

¹⁷ See Section 712(a)(2) of the Dodd-Frank Act.

¹⁸ The CFTC has adopted recordkeeping and reporting rules for swap dealers and major swap participants. See *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 FR 20128 (Apr. 3, 2012).

Rules 17a-3 and 17a-4. Under this recordkeeping program, broker-dealer SBSBs and MSBSBs – as broker-dealers – will be subject to Rules 17a-3 and 17a-4.¹⁹ The Commission is adopting amendments to these rules to implement the recordkeeping requirements mandated under the Dodd-Frank Act with respect to broker-dealer SBSBs and MSBSBs and to account for the security-based swap and swap activities of stand-alone broker-dealers.

Stand-alone and bank SBSBs and MSBSBs will be subject to Rules 18a-5 and 18a-6, which are modeled on Rules 17a-3 and 17a-4, respectively, as amended. Rules 18a-5 and 18a-6 do not include a parallel requirement for every requirement in Rules 17a-3 and 17a-4 because some of the requirements in Rules 17a-3 and 17a-4 relate to activities that are either not expected or not permitted to be conducted by stand-alone and bank SBSBs and MSBSBs. Further, the recordkeeping requirements applicable to bank SBSBs and MSBSBs are more limited in scope because: (1) the Commission’s authority under Section 15F(f)(1)(B)(i) of the Exchange Act is tied to activities related to the conduct of the firm’s business as an SBSB or MSBSB; (2) bank SBSBs and MSBSBs are subject to recordkeeping requirements applicable to banks with respect to their banking activities; and (3) the prudential regulators – rather than the Commission – are responsible for capital, margin, and other prudential requirements applicable to bank SBSBs and MSBSBs. For these reasons, the recordkeeping requirements for bank SBSBs and MSBSBs are tailored more specifically to their security-based swap activities as an SBSB or MSBSB.

¹⁹ A commenter requested clarification as to whether an OTC derivatives dealer dually registered as an SBSB or MSBSB would be subject to Rules 17a-3 and 17a-4, as amended, or Rules 18a-5 and 18a-6. An OTC derivatives dealer dually registered as an SBSB or MSBSB is subject to Rules 17a-3 and 17a-4 (rather than Rules 18a-5 and 18a-6). The undesignated introductory paragraphs to Rules 17a-3, 17a-4, 18a-5, and 18a-6 have been modified to clarify this application of the rules. In addition, as explained further below, an OTC derivatives dealer dually registered as an SBSB will be subject to Rules 18a-1, 18a-4, 18a-7, 18a-8, and 17a-13 rather than 15c3-1, 15c3-3, 17a-5, 17a-11, and Rules 18a-9. As a result, the Commission has made the following conforming modifications to Rules 17a-3, 17a-4, 18a-7, and 18a-8: (1) where Rules 17a-3 and 17a-4 refer to Rules 17a-5 or 17a-12, the Commission has added references to Rule 18a-7; (2) where Rules 17a-3 and 17a-4 refer to Rule 15c3-1, the Commission has added references to Rule 18a-1, if appropriate; and (3) where Rules 17a-3 and 17a-4 refer to Rule 15c3-3, the Commission has added references to Rule 18a-4.

2. Records to be Made and Kept Current

The Commission is adopting amendments to Rule 17a-3 to account for the security-based swap and swap activities of broker-dealers, including broker-dealer SBSBs and MSBSBs.²⁰ The Commission is adopting Rule 18a-5 – which is modeled on Rule 17a-3, as amended – to require stand-alone and bank SBSBs and MSBSBs to make and keep current certain records.²¹ As stated above, Rule 18a-5 does not include a parallel requirement for every requirement in Rule 17a-3.²² Paragraph (a) of Rule 18a-5 contains one set of recordkeeping requirements applicable to stand-alone SBSBs and MSBSBs, and paragraph (b) of Rule 18a-5 contains a separate set of recordkeeping requirements applicable to bank SBSBs and MSBSBs that are more limited in scope.

A commenter urged the Commission to harmonize its recordkeeping requirements for SBSBs and MSBSBs with the CFTC’s final recordkeeping requirements for swap dealers and major swap participants to the maximum extent possible, with the goal of permitting firms to utilize a single recordkeeping system for swap and security-based swap transactions and positions.²³ As discussed in more detail below in section II.E.1. of this release, in response to the comment and to promote harmonization with CFTC requirements, the Commission is adopting a limited alternative compliance mechanism in Rules 17a-3 and 18a-5.²⁴ In particular,

²⁰ Broker-dealer SBSBs and MSBSBs are required to make and keep current all the records required to be made and kept current by broker-dealers under Rule 17a-3, as amended, plus the additional records required specifically of an SBSB or MSBSB.

²¹ See Rule 18a-5, as adopted. Paragraphs (a) and (b) of Rule 18a-5 now read “make and keep current” instead of “make and keep” as proposed, to clarify the implicit requirement that a firm’s records should be current. This language is consistent with Rule 17a-3, as amended, on which Rule 18a-5 is modeled.

²² The Commission did not propose to include in Rule 18a-5 requirements that would parallel those set forth in paragraphs (a)(4), (13) through (16), (19), and (20) of Rule 17a-3. See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25200, n. 67.

²³ See Letter from Mary Kay Scucci, Managing Director, Securities Industry and Financial Markets Association (Sept. 5, 2014) (“SIFMA 9/5/2014 Letter”).

²⁴ See paragraph (b) of Rule 17a-3, as amended; paragraph (c) of Rule 18a-5, as adopted. As discussed in more detail below in section II.E.2. of this release, the Commission also is amending Rule 18a-10. Rule 18a-10 establishes a full alternative compliance mechanism that will permit certain stand-alone SBSBs that are registered as swap dealers and that predominantly engage in a swaps business to elect to comply with the capital, margin, and segregation requirements of the CEA and the CFTC’s rules in lieu of complying with the capital, margin, and segregation requirements of the Commission’s rules. The Commission is amending Rule 18a-10 in this document to permit firms that will operate under Rule 18a-10 to elect to comply with the recordkeeping and reporting requirements of the CEA and the CFTC’s rules in lieu of complying with Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9. Consequently, a stand-alone SBSB that qualifies to use the full alternative compliance

an SBSBSP or MSBSP that also is registered with the CFTC as a swap dealer or major swap participant may comply with the recordkeeping requirements of the CEA and the rules thereunder in lieu of the requirements (discussed below) to make and keep current trade blotters, customer account ledgers, and stock records solely with respect to information required to be included in those records regarding security-based swap transactions and positions if the SBSBSP or MSBSP meets certain conditions. The conditions include, among other things, that the SBSBSP or MSBSP preserves all of the data elements necessary to create a trade blotter, customer account ledger, or stock record reflecting security-based swap and swap transactions and positions and upon request promptly furnishes to representatives of the Commission such a trade blotter, customer account ledger, or stock record that includes security-based swap *and* swap transactions and positions in the format required by Rule 17a-3 or 18a-5, as applicable. This provision will permit an SBSBSP or MSBSP that also is registered with the CFTC as a swap dealer or major swap participant to maintain a single recordkeeping system for security-based swap and swap transactions and positions in accordance with the CFTC’s rules with respect to these required records.

Rules 17a-3 and 18a-5 require broker-dealers, SBSBSPs, and MSBSPs to make and keep current daily trading records, ledger accounts, a securities record, memoranda of brokerage orders, and/or memoranda of proprietary trades that include certain data elements with respect to security-based swap transactions.²⁵ The data elements are: (1) the type of security-based swap; (2) the reference security, index, or obligor; (3) the date and time of execution; (4) the effective date; (5) the scheduled termination date; (6) the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed; (7) the unique transaction identifier; and (8) the counterparty’s unique identification code (collectively, the “transaction data elements”).²⁶

mechanism of Rule 18a-10 can comply with the recordkeeping requirements of the CEA and the CFTC’s rules in lieu of complying with the requirements of Rule 18a-5.

²⁵ See paragraphs (a)(1) and (3), (a)(5)(ii), (a)(6)(ii), and (a)(7)(ii) of Rule 17a-3, as amended; paragraphs (a)(1) and (3), (a)(4)(ii), (a)(5), (b)(1) and (2), (b)(3)(ii), and (b)(4) and (5) of Rule 18a-5, as adopted.

²⁶ See paragraphs (a)(1) and (3), (a)(5)(ii), and (a)(6) of Rule 17a-3, as amended; paragraphs (a)(1) and (3) through (5) and (b)(1) through (5) of Rule 18a-5, as adopted.

As proposed, the counterparty’s unique identification code data element was the unique counterparty identifier.²⁷ Commenters suggested that the Commission replace the requirement to record the unique counterparty identifier with a requirement to record the counterparty’s legal entity identifier (“LEI”).²⁸ One commenter further stated that the Commission should allow firms to use different counterparty identifiers for internal purposes provided that they are able to translate their internal counterparty identifiers into the standard LEI convention.²⁹

For the sake of consistency with previously adopted Commission rules, the Commission is replacing the requirement to record the unique counterparty identifier throughout Rule 17a-3, as amended, and Rule 18a-5, as adopted, with a requirement to use the counterparty’s unique identification code (“UIC”), as defined in Regulation SBSR.³⁰ In particular, Regulation SBSR requires market participants – including broker-dealers, SBSDs, and MSBSPs – to report certain data elements to security-based swap data repositories (“SDRs”). One of the required data elements is a UIC, which Rule 900 of Regulation SBSR defines as “a unique identification code assigned to a person, unit of a person, product, or transaction.”³¹ SDRs must use UICs assigned by an internationally recognized standards-setting system (“IRSS”) if an IRSS has been recognized by the Commission and issues that type of UIC.³² In the release adopting Regulation SBSR, the Commission recognized the Global Legal Entity Identifier System (“GLEIS”) – which is responsible for issuing LEIs – as an IRSS that satisfies the requirements of Rule 903 of Regulation SBSR.³³ Under Rule 903, if an IRSS recognized by the Commission has assigned a UIC to a person, unit of a person, or product, each SDR must employ that

²⁷ See, e.g., *Recordkeeping and Reporting Proposing Release*, 79 FR at 25201.

²⁸ See SIFMA 9/5/2014 Letter; Letter from Senator Carl Levin, Chairman of Permanent Subcommittee on Investigations, U.S. Senate (July 3, 2014) (“Levin Letter”).

²⁹ See SIFMA 9/5/2014 Letter.

³⁰ 17 CFR 242.900-242.909. See *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, Exchange Act Release No. 74244 (Feb. 11, 2015), 80 FR 14563 at 14631-14632 (Mar. 19, 2015).

³¹ See 17 CFR 242.900(qq).

³² See 17 CFR 242.903 (“Rule 903”).

³³ See *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 80 FR at 14631-32.

UIC for reporting purposes under Regulation SBSR, and SDR participants must obtain such UICs for use under Regulation SBSR. Although a firm may use different counterparty identifiers for internal purposes, the firm's records compiled pursuant to the recordkeeping rules being adopted in this document must record the counterparty's UIC. To date, LEIs are the only specific type of UIC that must be used under Regulation SBSR.³⁴

In addition to that modification, the final requirements modify the transaction data elements by replacing the data elements "the termination or maturity date" and "the notional amount" with the data elements "the scheduled termination date" and "the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed", respectively. This aligns the terminology identifying the data elements with the terminology used in Regulation SBSR.³⁵

The Commission stated when proposing the recordkeeping requirements that "[w]here a data element that would need to be documented in the daily trading records of security-based swap transactions under the proposed amendments to Rule 17a-3 or proposed Rule 18a-5 is substantively the same as a data element that would need to be reported under proposed Rule 901, the Commission preliminarily believes that the type of information that would need to be documented in the daily trading records could be the same data element reported under proposed Rule 901."³⁶ The following data element requirements being adopted in this document use the same terminology as Rule 901 of Regulation SBSR: (1) the date and time of execution; (2) the effective date; (3) the scheduled termination date; and (4) the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed. The Commission clarifies that for these data elements registrants may record the same information provided pursuant to the requirements of Rule 901 to satisfy the related requirements of Rules 17a-3, as amended, and 18a-5, as adopted.

³⁴ While the Commission to date has only recognized the GLEIS as an IRSS, the rules being adopted in this document do not preclude the use of UICs issued by any other organization that is recognized as an IRSS in the future.

³⁵ See 17 CFR 242.901 ("Rule 901"); *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, Exchange Act Release No. 78321 (July 14, 2016), 81 FR 53545 (Aug. 12, 2016).

³⁶ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25201.

Finally, a commenter urged the Commission to provide firms with the flexibility to keep the proposed required trade blotters, general ledgers, ledgers for customer accounts, and stock record (discussed below) in various formats without mandating a particular format as long as all required information is kept and accessible to the Commission.³⁷ For example, with respect to the stock record, the commenter urged the Commission to provide SBSBs and MSBSBs flexibility in the manner in which they create records for security-based swap transactions and not mandate a detailed specified format (particularly with respect to tracking collateral received and pledged), provided that all required information is recorded and retained and can be pulled together upon request to create something that recognizably would be a record of the firm's security-based swap transactions.

These types of records are fundamental business records that a prudent company should make and retain in the ordinary course to document and track, among other things, its operations, financial account balances and transactions, asset and liability accounts, and custodial positions. The daily creation of these records builds an historical audit trail that can be used to reconstruct the sequence of transactions and changes in balances and positions, and to reconcile with third-party accounts. Having the records in place also can assist a firm account for transactions, balances, and positions if data feeds or other information systems that feed into the records are disrupted. Moreover, broker-dealers have been required to make and retain these types of records for their securities business and transactions for many years, and the Commission does not believe that doing so imposes a great burden. Further, based on staff experience, the Commission believes that creating a daily record of this information will facilitate the prompt production of the materials necessary for examinations and the oversight of broker-dealers, SBSBs, and MSBSBs. For these reasons, as discussed below, the Commission is adopting the requirements substantially as proposed. However, except for the general ledger, the firm can utilize the limited alternative compliance mechanism with respect to these records as they pertain to security-based swap

³⁷ See SIFMA 9/5/2014 Letter.

and swap transactions and positions if the conditions of the limited alternative compliance mechanism are met.³⁸

a. Amendments to Rule 17a-3 and New Rule 18a-5

Undesignated Introductory Paragraph

The Commission proposed adding an undesignated introductory paragraph to Rule 17a-3 explaining that the rule applies to a broker-dealer, including a broker-dealer dually registered with the Commission as an SBSB or MSBSP.³⁹ The paragraph further explained that an SBSB or MSBSP that is not dually registered as a broker-dealer (*i.e.*, a stand-alone SBSB or MSBSP, or bank SBSB or MSBSP) is subject to the books and records requirements in proposed Rule 18a-5. Similarly, proposed Rule 18a-5 included an undesignated introductory paragraph explaining that the rule applies to an SBSB or MSBSP that is not dually registered as a broker-dealer and that a broker-dealer that is dually registered as an SBSB or MSBSP is subject to the books and records requirements in Rule 17a-3. The Commission received no comments on the proposed undesignated introductory paragraphs and is adopting them with non-substantive modifications to clarify which rule (17a-3 or 18a-5) applies to a given type of entity.⁴⁰

Trade Blotters

Paragraph (a)(1) of Rule 17a-3 requires broker-dealers to make and keep current trade blotters (or other records of original entry) containing an itemized daily record of all transactions in securities, all receipts and deliveries of securities, all receipts and disbursements of cash, and all other debits and credits. The Commission proposed to amend this paragraph to require that the trade blotters of broker-dealers, including broker-dealer SBSBs and MSBSPs, contain specific information about security-based swaps, including by recording specific

³⁸ Certain stand-alone SBSBs may qualify to use the full alternative compliance mechanism of Rule 18a-10, in which case they may comply with the recordkeeping requirements of the CEA and the CFTC's rules in lieu of complying with the requirements of Rule 18a-5.

³⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25201.

⁴⁰ See undesignated introductory paragraph of Rule 17a-3, as amended; undesignated introductory paragraph of Rule 18a-5, as adopted.

transaction data elements.⁴¹ The Commission proposed to include parallel trade blotter requirements in Rule 18a-5 to apply to stand-alone and bank SBSBs and MSBSPs.

As discussed above, a commenter urged the Commission to provide firms with the flexibility to keep the proposed trade blotters in various formats without mandating a particular format as long as all required information is kept and accessible to the Commission.⁴² For the reasons discussed above, the Commission does not believe this would be appropriate. However, the Commission clarifies that a firm can create two separate trade blotters (one for security-based swaps and one for other types of positions). Moreover, as discussed in more detail below in section II.E.1. of this release, to promote harmonization with CFTC requirements and increase flexibility, an SBSB or MSBSP that is also registered as a swap dealer or major swap participant may opt to use the limited alternative compliance mechanism with respect to these records as they pertain to security-based swap and swap transactions and positions.⁴³ For these reasons, the Commission is adopting the trade blotter requirements substantially as proposed.⁴⁴

General Ledger

Paragraph (a)(2) of Rule 17a-3 requires broker-dealers, including broker-dealer SBSBs and MSBSPs, to make and keep current ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts. These records reflect the overall financial condition of the broker-dealer and in the Commission's view can incorporate security-based swap activities without the need for a clarifying amendment.

⁴¹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25201.

⁴² See SIFMA 9/5/2014 Letter.

⁴³ See paragraph (b) of Rule 17a-3, as amended; paragraph (c) of Rule 18a-5, as adopted.

⁴⁴ See paragraph (a)(1) of Rule 17a-3, as amended; paragraphs (a)(1) and (b)(1) of Rule 18a-5, as adopted. These paragraphs require that the trade blotters (or other records of original entry) include the following transaction data elements: (1) the type of security-based swap; (2) the reference security, index, or obligor; (3) the date and time of execution; (4) the effective date; (5) the scheduled termination date; (6) the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed; (7) the unique transaction identifier; and (8) the counterparty's UIC. As discussed above, these data elements were modified from the proposal to require the counterparty's UIC and to conform to Rule 901.

The Commission proposed a parallel provision in Rule 18a-5 requiring stand-alone SBSBs and MSBSBs to make and keep current the same types of general ledgers.⁴⁵

As discussed above, a commenter urged the Commission to provide firms with the flexibility to keep the proposed general ledger in various formats as long as all required information is kept and accessible to the Commission.⁴⁶ For the reasons discussed above, the Commission does not believe this would be appropriate. Moreover, as discussed above, the Commission does not believe it would be appropriate to apply the limited alternative compliance mechanism for this record because the information that must be recorded in a general ledger is broader than security-based swap information.⁴⁷ For this reason, the Commission is adopting the general ledger requirement as proposed.⁴⁸

Ledgers for Customer and Non-Customer Accounts

Paragraph (a)(3) of Rule 17a-3 requires broker-dealers to make and keep current certain ledger accounts (or other records) relating to securities and commodities transactions in customer and non-customer cash and margin accounts. The Commission proposed to amend this paragraph to require that broker-dealers, including broker-dealer SBSBs and MSBSBs, make and keep current ledger accounts (or other records) that record specific security-based swap transaction data elements.⁴⁹ The Commission proposed in Rule 18a-5 that stand-alone SBSBs and MSBSBs be required to make and keep current the same types of ledgers (or other records). However, the proposed rule text did not refer to “cash and margin accounts” because these types of accounts involve activities that may not be undertaken by stand-alone SBSBs and MSBSBs because they are not registered as broker-dealers. The Commission proposed in Rule 18a-5 that bank SBSBs and MSBSBs make

⁴⁵ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25201-02.

⁴⁶ See SIFMA 9/5/2014 Letter.

⁴⁷ However, a stand-alone SBSB that qualifies to use the full alternative compliance mechanism of Rule 18a-10 may comply with the recordkeeping requirements of the CEA and the CFTC’s rules in lieu of complying with the requirements of Rule 18a-5.

⁴⁸ See paragraph (a)(2) of Rule 18a-5, as adopted.

⁴⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25202.

and keep current ledger accounts (or other records) relating to securities and commodity transactions, but only with respect to their security-based swap customers and non-customers.

As discussed above, a commenter urged the Commission to provide firms with the flexibility to keep the proposed ledgers for customer accounts in various formats as long as all required information is kept and accessible to the Commission.⁵⁰ For the reasons discussed above, the Commission does not believe this would be appropriate. However, as discussed in more detail below in section II.E.1. of this release, to promote harmonization with CFTC requirements and provide additional flexibility, an SBS or MSBS that is also registered as a swap dealer or major swap participant may opt to use the limited alternative compliance mechanism with respect to these ledgers as they pertain to security-based swap and swap transactions and positions.⁵¹ For these reasons, the Commission is adopting the ledger account requirements substantially as proposed.⁵²

Stock Record

Paragraph (a)(5) of Rule 17a-3 requires broker-dealers to make and keep current a securities record (also referred to as a “stock record”). This is a record of the broker-dealer’s custody and movement of securities. The “long” side of the record accounts for the broker-dealer’s responsibility as a custodian of securities and shows, for example, the securities the firm has received from customers and securities owned by the broker-dealer. The “short” side of the record shows where the securities are located, such as at a securities depository. The Commission proposed to amend this paragraph to require that the securities record of broker-dealers, including broker-dealer SBSs and MSBSs, specifically account for security-based swap activity by reflecting

⁵⁰ See SIFMA 9/5/2014 Letter.

⁵¹ See paragraph (b) of Rule 17a-3, as amended; paragraph (c) of Rule 18a-5, as adopted. Moreover, a stand-alone SBS that qualifies to use the full alternative compliance mechanism of Rule 18a-10 may comply with the recordkeeping requirements of the CEA and the CFTC’s rules in lieu of complying with the requirements of Rule 18a-5.

⁵² See paragraph (a)(3) of Rule 17a-3, as amended; paragraphs (a)(3) and (b)(2) of Rule 18a-5, as adopted. These paragraphs require that the ledgers include the following transaction data elements: (1) the type of security-based swap; (2) the reference security, index, or obligor; (3) the date and time of execution; (4) the effective date; (5) the scheduled termination date; (6) the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed; (7) the unique transaction identifier; and (8) the counterparty’s UIC. As discussed above, these data elements were modified from the proposal to require the counterparty’s UIC and to conform to Rule 901.

separately for each security-based swap certain of the transaction data elements and other information.⁵³ In addition, the Commission proposed parallel securities record requirements in Rule 18a-5 for stand-alone and bank SBSDs and MSBSPs. However, the requirements for bank SBSDs and MSBSPs were limited to positions related to their business as an SBSD or MSBSP.

As discussed above, a commenter urged the Commission to provide firms with the flexibility to keep the proposed stock record in various formats as long as all required information is kept and accessible to the Commission.⁵⁴ For the reasons discussed above, the Commission does not believe this would be appropriate. However, as discussed in more detail below in section II.E.1. of this release, to promote harmonization with CFTC requirements and increase flexibility, an SBSD or MSBSP that is also registered as a swap dealer or major swap participant may opt to use the limited alternative compliance mechanism with respect to the stock record as it pertains to security-based swap and swap transactions and positions.⁵⁵ The Commission also clarifies that the requirement as adopted does not necessarily require the use of two separate stock records (*i.e.*, one for securities and one for security-based swaps); instead, a broker-dealer SBSD may elect to use a single stock record that incorporates all of its securities customers, including security-based swap customers.

A commenter stated that the Commission should replace the terms “long” and “short” in the proposed requirements with “bought” and “sold,” respectively.⁵⁶ The commenter explained that the former two terms were “not really applicable” to security-based swaps. The Commission agrees and the final amendment and rule use the terms “bought” and “sold.” For the reasons discussed above, the Commission is adopting the stock record requirements with this modification but otherwise substantially as proposed.⁵⁷

⁵³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25202.

⁵⁴ See SIFMA 9/5/2014 Letter.

⁵⁵ See paragraph (b) of Rule 17a-3, as amended; paragraph (c) of Rule 18a-5, as adopted. Moreover, a stand-alone SBSD that qualifies to use the full alternative compliance mechanism of Rule 18a-10 may comply with the recordkeeping requirements of the CEA and the CFTC’s rules in lieu of complying with the requirements of Rule 18a-5.

⁵⁶ See SIFMA 9/5/2014 Letter.

⁵⁷ See paragraph (a)(5)(ii) of Rule 17a-3, as amended; paragraphs (a)(4) and (b)(3) of Rule 18a-5, as adopted. These paragraphs require a securities record or ledger reflecting separately for each security-based swap the following transaction data elements: (1) the reference security, index, or obligor; (2) the unique transaction identifier; and (3) the counterparty’s UIC.

Memoranda of Brokerage Orders

Paragraph (a)(6) of Rule 17a-3 requires broker-dealers to make and keep current a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security. The memorandum must show the terms and conditions of each brokerage order. The Commission proposed to amend this paragraph to require broker-dealers, including broker-dealer SBSBs and MSBSBs, to make and keep current a memorandum of each brokerage order given or received for the purchase or sale of a security-based swap.⁵⁸ Further, the rule required that certain of the security-based swap transaction data elements be documented in the memorandum. The Commission proposed a parallel provision in Rule 18a-5 for bank SBSBs and MSBSBs. The Commission did not propose a parallel provision for stand-alone SBSBs and MSBSBs because these registrants are not permitted to engage in the business of effecting brokerage orders in security-based swaps without registering as a broker-dealer or a bank.⁵⁹

A commenter expressed general support for the proposed requirements but asked the Commission to confirm that the order ticket requirement only applies when there are in fact orders received for execution (*i.e.*, where the orders are potentially executed on a security-based swap execution facility), and not where there is a negotiation that results in a transaction without any executable order or other instruction given.⁶⁰ Furthermore, the commenter also asked the Commission to confirm that no order ticket needs to be created by the broker-dealer or its affiliated SBSB when a registered broker-dealer acts as an agent in connection with negotiated transactions between an affiliated SBSB and its customers without any executable order being received. In

As discussed above, these data elements were modified from the proposal to require the counterparty's UIC and to conform to Rule 901. The broker-dealer stock record requirement for securities other than security-based swaps that pre-existed these amendments is being preserved in paragraph (a)(5)(i) of Rule 17a-3, as amended.

⁵⁸ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25202-03.

⁵⁹ Generally, persons engaged in brokerage activities are required to register as brokers under Section 15 of the Exchange Act. However, Section 3(a)(4) of the Exchange Act permits banks to engage in certain limited securities brokerage activities. See also 17 CFR 247.100–781 (joint Commission and the Federal Reserve rules establishing further exemptions permitting banks to engage in certain securities brokerage activities without registering as a broker-dealer). Consequently, a bank SBSB or MSBSB may act as a broker or agent in a security-based swap transaction. In such instances, the brokerage order record requirements of paragraph (b)(4) of Rule 18a-5 would apply.

⁶⁰ See SIFMA 9/5/2014 Letter.

response, the Commission clarifies that the firm must receive an executable order or other instruction to trigger the memorandum requirement (*i.e.*, an order or instruction that the broker-dealer, SBSB, or MSBSP has agreed to execute on behalf of the counterparty). Consequently, preliminary negotiations or responding to questions about a potential transaction alone do not trigger the recordkeeping requirement. For these reasons, the Commission is adopting these requirements substantially as proposed.⁶¹

Memoranda of Proprietary Orders

Paragraph (a)(7) of Rule 17a-3 requires broker-dealers to make and keep current a memorandum of each purchase and sale for the account of the broker-dealer. Generally, this paragraph requires broker-dealers to document the terms of securities transactions where they are acting as a dealer or otherwise trading for their own account. The Commission proposed to amend this paragraph to require the terms of security-based swap transactions to be documented as well.⁶² In addition, the Commission proposed parallel memorandum requirements in Rule 18a-5 for stand-alone and bank SBSBs and MSBSPs, but only with respect to security-based swap transactions. The Commission received no comment that specifically addressed these proposed requirements and is adopting them substantially as proposed.⁶³

Confirmations

⁶¹ See paragraph (a)(6)(ii) of Rule 17a-3, as amended; paragraph (b)(4) of Rule 18a-5, as adopted. These paragraphs require that the memorandum include the following security-based swap transaction data elements: (1) the type of security-based swap; (2) the reference security, index, or obligor; (3) the date and time of execution; (4) the effective date; (5) the scheduled termination date; (6) the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed; (7) the unique transaction identifier; and (8) the counterparty's UIC. As discussed above, these data elements were modified from the proposals to require the counterparty's UIC and to conform to Rule 901. The broker-dealer memorandum requirement for securities other than security-based swaps that pre-existed these amendments is being preserved in paragraph (a)(6)(i) of Rule 17a-3, as amended.

⁶² See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25203-04.

⁶³ See paragraph (a)(7)(ii) of Rule 17a-3, as amended; paragraphs (a)(5) and (b)(4) of Rule 18a-5, as adopted. These paragraphs require that the memorandum include the following security-based swap transaction data elements: (1) the type of security-based swap; (2) the reference security, index, or obligor; (3) the date and time of execution; (4) the effective date; (5) the scheduled termination date; (6) the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed; (7) the unique transaction identifier; and (8) the counterparty's UIC. As discussed above, these data elements were modified from the proposals to require the counterparty's UIC and to conform to Rule 901. The broker-dealer memorandum requirement for securities (other than security-based swaps) that pre-existed these amendments is being preserved in paragraph (a)(7)(i) of Rule 17a-3, as amended.

Paragraph (a)(8) of Rule 17a-3 requires broker-dealers to keep copies of all trade confirmations. In addition, the Commission has adopted rules that require SBSs and MSBSs to provide trade acknowledgments containing the details of a security-based swap transaction within prescribed timeframes and to establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of the trade acknowledgments.⁶⁴ In particular, Rule 15Fi-2 requires SBSs and MSBSs to promptly verify the accuracy of, or otherwise dispute with their counterparties, the terms of trade acknowledgments they receive.

The Commission proposed to amend paragraph (a)(8) of Rule 17a-3 to require that broker-dealers, including broker-dealer SBSs and MSBSs, make and keep current copies of the security-based swap trade acknowledgments and verifications made pursuant to Rule 15Fi-2.⁶⁵ The Commission also proposed in Rule 18a-5 that stand-alone SBSs and MSBSs make and keep current copies of: (1) confirmations of all purchases or sales of securities that are not security-based swaps; and (2) security-based swap trade acknowledgments and verifications made pursuant to Rule 15Fi-2. The Commission further proposed parallel confirmation requirements in Rule 18a-5 for bank SBSs and MSBSs. However, the requirement to make and keep current copies of confirmations of all purchases and sales of securities that are not security-based swaps would be limited to transactions that related to their business as an SBS or MSBS.

A commenter stated that the Commission should not require a bank SBS or MSBS to make and keep current copies of all confirmations of all purchases and sales of securities (other than security-based swaps) or, in the alternative, the Commission should narrowly interpret when securities transactions are “related to the business” of a bank as an SBS or MSBS.⁶⁶ The Commission disagrees that confirmations should not be made for transactions when the security is not a security-based swap. A confirmation of any securities transaction that occurs within a security-based swap account will assist examiners in reviewing all the activities

⁶⁴ See 17 CFR 240.15Fi-2 (“Rule 15Fi-2”); see also *Trade Acknowledgment and Verification of Security-Based Swap Transactions*, Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39807 (June 17, 2016).

⁶⁵ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25204.

⁶⁶ See SIFMA 9/5/2014 Letter.

in the account and whether the firm is acting in accordance with applicable securities laws. The Commission notes, however, that a bank SBSB or MSBSP must make and keep current copies of confirmations relating to transactions in securities, other than security-based swaps, only if the transaction relates to its business as an SBSB or MSBSP. Consequently, the final requirements do not apply to a security transaction that relates solely to the bank acting as a bank and not as an SBSB or MSBSP. For these reasons, the Commission is adopting the requirements as proposed.⁶⁷

Accountholder Information

Paragraph (a)(9) of Rule 17a-3 requires broker-dealers to make a record for each securities accountholder that contains certain information about the person. The Commission proposed to amend this paragraph to require broker-dealers, including broker-dealer SBSBs and MSBSPs, to record certain information with respect to security-based swap accountholders.⁶⁸ The Commission proposed parallel requirements in Rule 18a-5 for stand-alone and bank SBSBs and MSBSPs with respect to recording the information about security-based swap accountholders.

A commenter stated that it is not common practice in the swaps market to obtain signatures of persons authorized to transact business on behalf of a counterparty in a swap account and recommended instead that broker-dealers, SBSBs, and MSBSPs be permitted to satisfy this requirement by establishing policies and procedures relating to counterparty trade authorization.⁶⁹ It is a prudent business practice for financial institutions to formalize relationships with their counterparties and to take orders from individuals only if they are authorized to enter into transactions on behalf of the counterparty. This provides greater legal certainty in terms of enforcing the rights of the financial institution and its counterparty. Obtaining the signatures of persons authorized to transact on behalf of the counterparty is one way to promote these objectives, but the

⁶⁷ See paragraph (a)(8)(ii) of Rule 17a-3, as amended; paragraphs (a)(6) and (b)(6) of Rule 18a-5, as adopted. The broker-dealer confirmation requirement for securities other than security-based swaps that pre-existed these amendments is being preserved in paragraph (a)(8)(i) of Rule 17a-3, as amended.

⁶⁸ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25204.

⁶⁹ See SIFMA 9/5/2014 Letter.

Commission agrees with the commenter that it is not the only way. Maintaining a record of persons authorized to transact on behalf of the counterparty such as a copy of a corporate resolution granting the person such authority is another way. Consequently, the Commission is modifying the text of the final rules so that the means of establishing a record of the authorization of each person to whom the counterparty has granted authority to transact business in the security-based swap account are not limited to obtaining signatures of such persons. In particular, the final rules provide that, for each security-based swap account, the broker-dealer, SBSB, or MSBSP must make and retain a record of the authorization of each person the counterparty has granted authority to transact business in the security-based swap account. This record could be, for example, a signature of the person, a copy of the corporate resolution of the counterparty granting the person authority to trade on its behalf, or a communication from the counterparty identifying the person as having been granted authority to act on its behalf. In addition to promoting the objectives described above, this record will assist Commission staff in examining whether a given transaction has been appropriately authorized.

Another commenter raised concerns about disclosures to the Commission regarding clients, associated persons, or other such persons arising from confidentiality requirements under the local laws of certain non-U.S. jurisdictions.⁷⁰ The Commission understands that some foreign laws and regulations may limit or prevent disclosure of customer information to the Commission. These types of restrictions may include privacy laws, which generally restrict disclosure of certain identifying information about a natural person or entity, and so-called “blocking statutes” (including secrecy laws) that prevent the disclosure of information relating to third parties and/or foreign governments. In response, the Commission notes that it has proposed in a separate release additional provisions that are designed to address concerns about the cross-border application of certain

⁷⁰ See SIFMA 9/5/2014 Letter; Letter from Institute of International Bankers and Securities Industry and Financial Markets Association (June 21, 2018) (“IIB/SIFMA 6/21/2018 Letter”).

requirements that will be or have been proposed to be applicable to SBSBs and MSBSBs.⁷¹ For the foregoing reasons, the Commission is adopting the accountholder requirements with the modifications discussed above.⁷²

Options Positions

Paragraph (a)(10) of Rule 17a-3 requires broker-dealers to make and keep current a record of all options positions. The Commission did not propose to amend this paragraph to account for security-based swaps. In addition, because the records required under this paragraph are not specific to security-based swaps, the Commission did not propose to include an analogous provision applicable to bank SBSBs and MSBSBs. However, in order to facilitate the monitoring of the financial condition of stand-alone SBSBs and MSBSBs, the Commission proposed a parallel provision in Rule 18a-5 applicable to these entities.⁷³ One commenter expressed support for this proposed requirement.⁷⁴ The Commission is adopting the options position recordkeeping requirement as proposed.⁷⁵

Trial Balances and Computation of Net Capital

Paragraph (a)(11) of Rule 17a-3 requires broker-dealers, including broker-dealer SBSBs and MSBSBs, to make and keep current a record of the proof of money balances of all ledger accounts in the form of trial balances and certain records relating to the computation of aggregate indebtedness and net capital under the broker-dealer net capital rule.⁷⁶ The Commission did not propose that bank SBSBs and MSBSBs make similar

⁷¹ See *Proposed Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements*, Exchange Act Release No. 85823 (May 10, 2019), 84 FR 24206 (May 14, 2019) (“*Cross-Border Application Proposing Release*”).

⁷² See paragraph (a)(8)(iv) of Rule 17a-3, as amended; paragraphs (a)(7) and (b)(7) of Rule 18a-5, as adopted. These paragraphs require that SBSBs and MSBSBs record for each security-based swap account the counterparty’s UIC, along with other information. For the reasons discussed above, the “unique counterparty identifier” transaction data element in the proposed requirement was replaced with the counterparty’s UIC. The broker-dealer accountholder requirement for securities other than security-based swaps that pre-existed these amendments is being preserved in paragraphs (a)(1)(i) through (iii) of Rule 17a-3, as amended.

⁷³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25204-05.

⁷⁴ See SIFMA 9/5/2014 Letter.

⁷⁵ See paragraph (a)(8) of Rule 18a-5, as adopted.

⁷⁶ The broker-dealer net capital rule is codified at 17 CFR 240.15c3-1 (“Rule 15c3-1”).

records as the prudential regulators administer the capital requirements applicable to these entities.⁷⁷ The Commission did propose a parallel requirement in Rule 18a-5 for stand-alone SBSBs and MSBSBs to facilitate the review and monitoring of their financial condition and their compliance with the regulatory capital requirements in proposed Rules 18a-1 and 18a-2, respectively.⁷⁸ One commenter noted the importance of including recordkeeping and reporting requirements with respect to trial balances and the computation of net capital.⁷⁹ The Commission has adopted capital requirements for stand-alone SBSBs and MSBSBs in Rules 18a-1 and 18a-2, respectively.⁸⁰ Consequently, the Commission is adopting the trial balances and computation of net capital recordkeeping requirement for stand-alone SBSBs and MSBSBs as proposed.⁸¹

Associated Persons

Paragraph (a)(12) of Rule 17a-3 requires broker-dealers, including broker-dealer SBSBs and MSBSBs, to make and keep current a questionnaire or application for employment for each associated person that contains information about the associated person (the “questionnaire requirement”) as well other information about associated persons. The Commission proposed parallel requirements in Rule 18a-5 for stand-alone and bank SBSBs and MSBSBs.⁸² Further, the Commission proposed to amend the definition of “associated person” in Rule 17a-3 to include in the definition a person associated with an SBSB or MSBSB as defined in Section 3(a)(70) of the Exchange Act. The Commission proposed a parallel definition in Rule 18a-5. However, the proposed Rule 18a-5 definition was more limited as applied to bank SBSBs and MSBSBs in that it covered persons whose activities relate to the conduct of the bank’s business as an SBSB or MSBSB.

⁷⁷ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25205.

⁷⁸ See *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70241, 70217-57 (Nov. 23, 2012) (“*Capital, Margin, and Segregation Proposing Release*”) (proposing Rules 18a-1 and 18a-2).

⁷⁹ See SIFMA 9/5/2014 Letter. The commenter also made substantive recommendations concerning the proposed net capital requirements for SBSBs and MSBSBs that are beyond the scope of this release.

⁸⁰ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43879-908.

⁸¹ See paragraph (a)(9) of Rule 18a-5, as adopted.

⁸² See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25205.

Commenters requested that the Commission limit the proposed questionnaire requirement for stand-alone and bank SBSs and MSBSs to associated persons who effect or are involved in effecting security-based swaps on the firm's behalf.⁸³ The Commission agrees with the comments. The questionnaire requirement, as proposed, was designed to provide a basis for assessing compliance with Section 15F(b)(6) of the Exchange Act and a related rule thereunder.⁸⁴ Both the statute and the rule (Rule 15Fb6-2) apply to associated persons who effect or are involved in effecting security-based swaps on behalf of the SBS or MSBS.⁸⁵ Accordingly, the Commission is narrowing the scope of the questionnaire requirement in Rule 18a-5 for stand-alone and bank SBSs and MSBSs so that it applies only with respect to associated persons who effect or are involved in effecting security-based swaps on the firm's behalf.⁸⁶

A commenter also requested that the Commission modify the proposal for foreign SBSs and MSBSs so that the questionnaire requirement does not apply to associated persons who effect or are involved in effecting security-based swap transactions with non-U.S. persons or foreign branches.⁸⁷ As noted above, the questionnaire requirement is intended to support the substantive prohibition in Section 15F(b)(6) of the Exchange Act and the related certification and background check requirements in Rule 15Fb6-2. The

⁸³ See, e.g., SIFMA 9/5/2014 Letter; IIB/SIFMA 6/21/2018 Letter.

⁸⁴ See 17 CFR 15Fb6-2 ("Rule 15Fb6-2").

⁸⁵ Section 15F(b)(6) of the Exchange Act provides that it shall be unlawful for an SBS or MSBS to permit any associated person of the SBS or MSBS who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf, if the SBS or MSBS knows, or in the exercise of reasonable care should have known, of the statutory disqualification, except to the extent otherwise provided by rule, regulation, or order of the Commission. Rule 15Fb6-2: (1) prohibits an SBS or MSBS from acting as an SBS or MSBS unless it has certified electronically that it neither knows, nor in the exercise of reasonable care should have known, that any person associated with the SBS or MSBS "who effects or is involved in effecting security-based swaps on behalf of the [SBS] or [MSBS] is subject to a statutory disqualification"; and (2) requires the Chief Compliance Officer (or his or her designee) of the SBS or MSBS to review and sign the questionnaire or application for employment executed by every associated person who is a natural person and who effects or is involved in effecting security-based swaps on the SBS's or MSBS's behalf, and that this questionnaire or application shall serve as the basis for a background check of the associated person to verify that the person is not subject to a statutory disqualification.

⁸⁶ See paragraphs (a)(10)(i) and (b)(8)(i) of Rule 18a-5, as adopted. The Commission is also modifying paragraph (b)(8)(i) of Rule 18a-5 as proposed to eliminate the phrase "whose activities relate to the business of the security-based swap dealer or major security-based swap participant." As discussed above, the Commission proposed this limitation on the scope of the questionnaire or application for employment to address bank SBSs and MSBSs. This limitation is no longer necessary in light of the final rule's limitation to an associated person "who effects or is involved in effecting security-based swaps on the security-based swap dealer's or major security-based swap participant's behalf."

⁸⁷ See SIFMA 9/5/2014 Letter.

Commission recognizes, however, as noted by the commenters, that there may be situations in which an SBSB or MSBSP is prohibited by applicable non-U.S. law from receiving, creating, or maintaining records with respect to certain of the information that needs to be recorded pursuant to the questionnaire requirement. Consequently, the Commission has proposed in a separate release additional provisions in Rule 18a-5 that would address situations where the law of a non-U.S. jurisdiction in which an associated person is employed or located may prohibit a stand-alone or bank SBSB or MSBSP from receiving, or creating or maintaining a record of, any of the information mandated by the questionnaire requirement.⁸⁸

Finally, for the sake of clarity, the Commission emphasizes that these associated person recordkeeping requirements apply to natural persons and not to legal entities that may be associated persons. For the reasons stated above, the Commission is adopting the associated person recordkeeping requirements with the modifications discussed above.⁸⁹

Liquidity Stress Test

In 2012, the Commission proposed liquidity stress test requirements for entities that are or would be authorized to use internal models to compute net capital; namely, certain stand-alone broker-dealers (“ANC broker-dealers”) as well as certain broker-dealer and stand-alone SBSBs.⁹⁰ Consequently, the Commission proposed that these entities be required to make and keep current certain records relating to the liquidity stress test requirements, if applicable.⁹¹ The Commission has deferred consideration of the proposed liquidity stress test requirements.⁹² Accordingly, the Commission is deferring consideration of the related recordkeeping requirements.⁹³

⁸⁸ See *Cross-Border Application Proposing Release*, 84 FR at 24206.

⁸⁹ See paragraphs (a)(10) and (b)(8) of Rule 18a-5, as adopted.

⁹⁰ See *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70252-54.

⁹¹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25205-06.

⁹² See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43874.

⁹³ Paragraph (a)(24) of Rule 17a-3, as proposed; paragraph (a)(11) of Rule 18a-5, as proposed. The proposed recordkeeping requirements would have been set forth in these paragraphs. Since the publication of the recordkeeping and reporting proposing release, a new paragraph (a)(24) has been adopted by the Commission. See *Form CRS Relationship Summary*;

Account Equity and Margin Calculations

The Commission proposed to amend Rule 17a-3 to require broker-dealer SBSBs and MSBSPs to make and keep current a record of the daily calculations that would be required under the proposed margin rule for non-cleared security-based swaps – Rule 18a-3.⁹⁴ The Commission proposed a parallel requirement in Rule 18a-5 for stand-alone SBSBs and MSBSPs. A commenter expressed support for the proposal⁹⁵ and the Commission has adopted Rule 18a-3 requiring the daily calculations.⁹⁶ For the reasons discussed in the proposing release, the Commission is adopting daily calculation recordkeeping requirements substantially as proposed.⁹⁷

Possession or Control Requirements

The Commission proposed to amend Rule 17a-3 to require broker-dealer SBSBs to make and keep current a record of compliance with the possession or control requirements in the proposed segregation rule for SBSBs – Rule 18a-4.⁹⁸ The Commission proposed a parallel requirement in Rule 18a-5 for stand-alone SBSBs. A commenter supported the proposal⁹⁹ and the Commission has adopted Rule 18a-4 prescribing possession or

Amendments to Form ADV, Exchange Act Release No. 86032 (June 5, 2019), 84 FR 33492, (July 12, 2019); 17 CFR 240.17a-3(a)(24). Paragraph (a)(11) of Rule 18a-5 is being designated as “[Reserved].”

⁹⁴ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25206-07. See also *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70261-63 (proposing Rule 18a-3, requiring, among other things, that nonbank SBSBs perform two daily calculations for each security-based swap account (the equity in the account and a margin amount) and nonbank MSBSPs to perform one daily calculation (the equity in the account)).

⁹⁵ See SIFMA 9/5/2014 Letter.

⁹⁶ *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43909-17.

⁹⁷ See paragraph (a)(25) of Rule 17a-3, as amended; paragraph (a)(12) of Rule 18a-5, as adopted. As proposed, these paragraphs referred to the “amount of equity” in the account and the “margin amount.” Rule 18a-3, as adopted, refers instead to the “current exposure” and “initial margin amount.” Consequently, the paragraphs of the recordkeeping rules as adopted refer to the “current exposure” and “initial margin amount.”

⁹⁸ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25207. See also *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70278-82 (proposing Rule 18a-4 requiring, among other things, that SBSBs maintain possession or control over excess securities collateral).

⁹⁹ See SIFMA 9/5/2014 Letter.

control requirements.¹⁰⁰ For the reasons discussed in the proposing release, the Commission is adopting the security-based swap possession or control recordkeeping requirements substantially as proposed.¹⁰¹

Customer Reserve Account Requirements

The Commission proposed to amend Rule 17a-3 to require broker-dealer SBSBs to make and keep current a record of security-based swap reserve account computations pursuant to proposed Rule 18a-4.¹⁰² The Commission proposed a parallel requirement in Rule 18a-5 for stand-alone SBSBs. A commenter expressed support for the proposal¹⁰³ and the Commission has amended Rule 15c3-3 and adopted Rule 18a-4 to prescribe security-based swap reserve account requirements.¹⁰⁴ For the reasons discussed in the proposing release, the Commission is adopting the security-based swap customer reserve account recordkeeping requirements substantially as proposed.¹⁰⁵

Unverified Transactions

It is prudent practice for counterparties to promptly confirm the terms of executed OTC derivatives transactions.¹⁰⁶ The Commission adopted Rule 15Fi-2 to promote this practice. As discussed above, Rule 15Fi-2 requires, among other things, that SBSBs and MSBSPs provide trade acknowledgments containing the details of security-based swap transactions and promptly verify the accuracy of, or otherwise dispute with their

¹⁰⁰ *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43930-44.

¹⁰¹ See paragraph (a)(26) of Rule 17a-3, as amended; paragraphs (a)(13) and (b)(9) of Rule 18a-5, as adopted. The Commission proposed that Rule 18a-4 apply to all SBSBs, but in response to comment adopted security-based swap segregation requirements for broker-dealers, including broker-dealer SBSBs, in the broker-dealer segregation rule, which is codified at 17 CFR 240.15c3-3 (“Rule 15c3-3”). As a result, the Commission is modifying the cross references in paragraph (a)(26) of Rule 17a-3 to reflect the placement of the customer protection requirements for broker-dealer SBSBs in paragraph (p) of Rule 15c3-3 rather than in paragraph (b) of Rule 18a-4 as proposed. Paragraphs (a)(13) and (b)(9) of Rule 18a-5, as adopted, which apply to stand-alone and bank SBSBs, respectively, are not affected by this change.

¹⁰² See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25207-08.

¹⁰³ See SIFMA 9/5/2014 Letter.

¹⁰⁴ *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43938-42.

¹⁰⁵ See paragraph (a)(27) of Rule 17a-3, as amended; paragraphs (a)(14) and (b)(10) of Rule 18a-5, as adopted. Because the segregation requirements were codified in Rules 15c3-3 and 18a-4, the Commission is modifying the cross references in new paragraph (a)(27) of Rule 17a-3 to new paragraph (p) of Rule 15c3-3 rather than in paragraph (b) of new Rule 18a-4 as proposed. Paragraphs (a)(14) and (b)(10) of Rule 18a-5 are not affected by this change.

¹⁰⁶ See *Trade Acknowledgment and Verification of Security-Based Swap Transactions*, 81 FR at 39807.

counterparties, the terms of trade acknowledgments they receive. To promote compliance with then proposed Rule 15Fi-2 and the risk management practices of SBSDs and MSBSPs, the Commission proposed to amend Rule 17a-3 and include parallel provisions in Rule 18a-5 that would require these entities to make and keep current a record of each security-based swap trade acknowledgment that is not verified within five business days of execution.¹⁰⁷ While the Commission did not prescribe a timeframe for security-based swap trade acknowledgments to be verified, paragraph (e) of Rule 15Fi-2 requires procedures reasonably designed to obtain “prompt verification.”

A commenter urged the Commission not to establish a rigid threshold of five business days and suggested that the Commission “enter into a constructive dialogue with interested constituencies to establish best practices for trade verification.”¹⁰⁸ The requirement to make a record of security-based swap trade acknowledgments not verified within five business days is not intended to establish a maximum timeframe within which verification should be obtained pursuant to Rule 15Fi-2. Instead, it is designed to require SBSDs and MSBSPs to make a record of the transactions that have gone unverified for a significant length of time, as the delay in obtaining verification may indicate, for example, the existence of a disagreement with the counterparty as to the terms of the transaction. The Commission believes that five business days represents an appropriate amount of time to wait before requiring a record to be made. This timeframe is designed to strike an appropriate balance in terms of a time period that is not too short and would capture information that is not relevant to Rule 15Fi-2 or that is too long and would not promote compliance with Rule 15Fi-2. For these reasons, the Commission is adopting the unverified transaction recordkeeping requirements substantially as proposed.¹⁰⁹

¹⁰⁷ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25208.

¹⁰⁸ See SIFMA 9/5/2014 Letter.

¹⁰⁹ See paragraph (a)(28) of Rule 17a-3, as amended; paragraphs (a)(15) and (b)(11) of Rule 18a-5, as adopted. For the reasons discussed above, the Commission modified the proposed rule text in these paragraphs to replace the requirement to record the “unique counterparty identifier” with the counterparty’s UIC. See paragraph (a)(28) of Rule 17a-3, as proposed to be amended; paragraphs (a)(15) and (b)(11) of Rule 18a-5, as proposed to be adopted.

Finally, the Commission has previously noted that in complying with the trade acknowledgement and verification requirements, policies and procedures reasonably designed to ensure prompt verification of a transaction may include policies and procedures under which an SBSBSP or MSBSP relies on its counterparty's negative affirmation to the terms of a trade acknowledgment. The Commission has stated that those policies and procedures generally should require the SBSBSP or MSBSP to document its counterparty's agreement to rely on negative affirmation.¹¹⁰ As such, transactions verified by negative affirmation do not need to be recorded as unverified under Rules 17a-3 and 18a-5.

Records Relating to Business Conduct Standards

The Commission has adopted rules to establish business conduct and chief compliance officer requirements for SBSBSPs and MSBSPs.¹¹¹ The requirements in these rules address (among other things):

- Verification of the status of the counterparty;
- Certain disclosures related to the daily mark and its calculation;
- Disclosures regarding material incentives, conflicts of interest, material risks, and characteristics of the security-based swap, and certain clearing rights;
- Certain “know your counterparty” and suitability obligations for SBSBSPs;
- Supervisory requirements, including written policies and procedures;
- Certain requirements regarding interactions with special entities;
- Provisions intended to prevent SBSBSPs from engaging in certain “pay to play” activities; and
- Certain minimum requirements relating to chief compliance officers.

To promote compliance with these then-proposed requirements, the Commission proposed to amend Rule 17a-3 and include parallel provisions in Rule 18a-5 that would require all SBSBSPs to make and keep current

¹¹⁰ See *Trade Acknowledgment and Verification of Security-Based Swap Transactions*, 81 FR at 39820.

¹¹¹ See 17 CFR 240.15Fh-1 (“Rule 15Fh-1”); 17 CFR 240.15Fh-2 (“Rule 15Fh-2”); 17 CFR 240.15Fh-3 (“Rule 15Fh-3”); 17 CFR 240.15Fh-4 (“Rule 15Fh-4”); 17 CFR 240.15Fh-5 (“Rule 15Fh-5”); 17 CFR 240.15Fh-6 (“Rule 15Fh-6”); 17 CFR 240.15Fk-1 (“Rule 15Fk-1”). See also *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960 (May 13, 2016).

a record that demonstrates their compliance with Rule 15Fh-6 (regarding political contributions by certain SBSDs).¹¹² In addition, the Commission proposed to amend Rule 17a-3 and include parallel provisions in Rule 18a-5 to require that all SBSDs and MSBSPs make and keep current a record that demonstrates their compliance with Rules 15Fh-1 through 15Fh-5 and Rule 15Fk-1, as applicable.¹¹³ These recordkeeping requirements would require covered firms to keep supporting documents evidencing their compliance with the business conduct and chief compliance officer requirements; a mere attestation of compliance would not be sufficient. To the extent that the rules require providing or receiving written disclosures or written representations, the SBSD or MSBSP would be required to retain a copy of the disclosures or representations.

A commenter asked the Commission to confirm that the proposed requirements would not create additional recordkeeping obligations with respect to the business conduct standards,¹¹⁴ particularly with respect to the requirements relating to compliance with such requirements.¹¹⁵ The commenter also generally stated that the Commission should not adopt additional recordkeeping rules relating to the pay-to-play provisions set forth in the Commission's business conduct release.¹¹⁶

In response to the commenter's concern, the Commission notes that the proposed recordkeeping requirements were not intended to add additional substantive business conduct or pay-to-play requirements. The relevant substantive requirements are prescribed in the business conduct and pay-to-play rules; the recordkeeping requirements are designed to require records of compliance with those already existing substantive requirements. The Commission acknowledges, however, that they would impose new requirements to *document* a registrant's compliance with several of the substantive business conduct and pay-to-play

¹¹² See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25208.

¹¹³ Paragraph (b)(2) of Rule 15Fk-1 requires chief compliance officers of SBSDs and MSBSPs to take reasonable steps to ensure that the registrant 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 SBSD or MSBSP.

¹¹⁴ See *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 76 FR 42396.

¹¹⁵ See SIFMA 9/5/2014 Letter.

¹¹⁶ See *id.* See also *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR 29960.

requirements as well as new requirements to provide written documentation where the business conduct and pay-to-play rules allowed for oral disclosure. These proposed documentation requirements were designed to assist Commission examiners in reviewing compliance with the business conduct and pay-to-play requirements, and the anticipated additional burdens they will impose on registrants are discussed below in Sections IV and V. For these reasons, the Commission is adopting the business conduct standards recordkeeping requirements substantially as proposed.¹¹⁷

b. Additional Amendments to Rule 17a-3 and Modifications to Rule 18a-5

The Commission proposed several amendments to Rule 17a-3 to eliminate obsolete text, improve readability, and modernize terminology. The Commission received no comments addressing these proposed amendments and, as discussed below, is adopting them substantially as proposed.

Reference is made throughout Rule 17a-3 to “members” of a national securities exchange as a distinct class of registrant in addition to “brokers” and “dealers.” The Commission proposed to remove these references to “members” given that the rule applies to brokers-dealers, which would include members of a national securities exchange that are brokers-dealers.¹¹⁸ The rule being adopted does not remove these references to “members” to avoid confusion as to whether their removal resulted in a substantive change to the rule.

¹¹⁷ See paragraph (a)(30) of Rule 17a-3, as amended; paragraphs (a)(17) and (b)(13) of Rule 18a-5, as adopted. For the sake of clarity, the rules as adopted require “[a] record documenting” compliance with the business conduct standards, as opposed to “[a] record that demonstrates” such compliance as proposed. In addition, because Rule 15Fh-6 applies only to SBSBs, and not to MSBs, the Commission is removing the proposed reference to MSBs in paragraphs (a)(16) and (b)(12) of Rule 18a-5. On October 31, 2018, it issued a statement setting forth the Commission’s position that, for a period of five years from the Registration Compliance Date for SBSBs and MSBs (as defined in *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 80 FR at 48988 and discussed below in section III.B. of this release), certain actions with respect to specific provisions of the business conduct standards will not provide a basis for a Commission enforcement action. See *Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, Exchange Act Release No. 84511 (Oct. 31, 2018), 83 FR 55486 (Nov. 6, 2018) (“*Statement on Business Conduct Standards*”). To the extent SBSBs and MSBs rely on the statement, the Commission encourages them to maintain records of the written representations described in the statement until such time as the statement is no longer in force.

¹¹⁸ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25209.

The Commission is adopting a global change to replace the word “shall” in the rule with the word “must” or “will” where appropriate.¹¹⁹ Similarly, when defining terms, the Commission is replacing the phrase “shall mean” with the word “means.”¹²⁰ The Commission is also adopting certain stylistic, corrective, and punctuation amendments to improve the rule’s readability.¹²¹ The Commission is simplifying the text in paragraph (a) of Rule 17a-3 to state that Rule 17a-3 applies to “every broker or dealer,” since the newly adopted undesignated introductory paragraph already provides sufficient detail as to the types of registrants to which the rule applies.¹²² In recognition of the fact that broker-dealers may execute orders for non-customers, the Commission is amending paragraph (a)(6) of Rule 17a-3 to specify that a broker-dealer must maintain a copy of the customer’s *or non-customer’s* subscription agreement.¹²³

¹¹⁹ The amendments replace the word “shall” with the word “must” or “will” in the following paragraphs of Rule 17a-3, as amended: (a) introductory text, (a)(6)(i)(A), (a)(7)(i), (a)(10) and (11), (a)(12)(i), (a)(16)(ii), (a)(17)(i), (a)(18)(i), (a)(19)(i), (b), (d), (e), and (f).

¹²⁰ The amendments replace the phrase “shall mean” with the word “means” in the following paragraphs of Rule 17a-3, as amended: (a)(6)(i)(A) and (a)(16)(ii)(A) and (B).

¹²¹ The Commission is adopting the following stylistic and corrective changes to Rule 17a-3, as amended: (1) adding to paragraph (a)(1) the phrase “such securities were”; (2) adding to paragraph (a)(4)(vi) the word “and” after the semicolon; (3) replacing the word “of” with the word “or” in paragraph (a)(5), resulting in the phrase “for its account *or* for the account of its customers or partners”; (4) replacing the phrase “purchase or sale of securities” with the phrase “purchase or sale of a security” in the first sentence of paragraph (a)(6)(i); (5) replacing the word “and” with the word “or” in paragraph (a)(7), resulting in the phrase “A memorandum of each purchase *or* sale”; (6) replacing the phrase “in respect of” with the phrase “with respect to” in paragraph (a)(9); (7) adding the phrase “, as applicable:” after the word “indicating” in paragraph (a)(9); (8) including the word “and” between the second-to-last and last subparagraphs of paragraph (a)(9) (instead of after every subparagraph); (9) replacing cross-reference in paragraph (a)(12) to “paragraph (h)(4)” with a cross-reference to “paragraph (f)(4)” due to the proposed deletion of two paragraphs; (10) amending paragraph (a)(12)(i)(G) to refer to a “broker or dealer” instead of a “broker-dealer”; (11) replacing the superfluous “or” with a comma in the phrase “wrongful taking of property or bribery” in paragraph (a)(12)(i)(G); (12) clarifying in paragraph (a)(1) that the unit and aggregate purchase or sale price, if any includes the financial terms for security-based swaps; (13) replacing “,” with “;” after the phrase “a notation of that entry” in paragraph (a)(6)(i)(A) for consistency with 17 CFR 240.17a-3(a)(6)(i)(A) and paragraph (b)(4) of Rule 18a-5, as adopted; (14) replacing “In the case of” with “For each” in paragraph (a)(9)(iv) for consistency with paragraphs (a)(7) and (b)(7) of Rule 18a-5, as adopted; (15) adding quotation marks around the term “associated person” in paragraph (a)(12)(i) for consistency with paragraph (a)(12)(i) of Rule 17a-3 and paragraphs (a)(10)(i) and (b)(8)(i) of Rule 18a-5, as adopted; (16) replacing “or any broker or dealer” with “, or any broker, dealer, security-based swap dealer or major security-based swap participant” in paragraph (a)(12)(i)(F) for consistency with paragraphs (a)(10)(i)(F) and (b)(8)(i)(F) of Rule 18a-5, as adopted; (17) adding “, or” after the phrase “wrongful taking of property” in paragraph (a)(12)(i)(G) for consistency with paragraph (a)(12)(i)(G) of Rule 17a-3 and paragraphs (a)(10)(i)(G) and (b)(8)(i)(G) of Rule 18a-5, as adopted; (18) replacing “17 CFR 240.17a-3” with “this section” in paragraph (b)(v); and (19) replacing “§§ 240.17a-3 and 17a-4” with “this section and § 240.17a-4” in paragraph (b).

¹²² See undesignated introductory paragraph of Rule 17a-3, as amended.

¹²³ See paragraph (a)(6) of Rule 17a-3, as amended.

The Commission is restructuring paragraph (a)(11) of Rule 17a-3 to eliminate paragraphs (a)(11)(i) and (ii).¹²⁴ Under these amendments, the text formerly located in paragraph (a)(11)(i) of Rule 17a-3 is set forth in the second sentence of paragraph (a)(11) of Rule 17a-3, as amended, and the text of paragraph (a)(11)(ii) has been deleted from the rule. The Commission proposed to amend the “Provided, however” paragraph in paragraph (a)(12) of Rule 17a-3 that follows paragraph (a)(12)(i)(H) by replacing the list of entities enumerated in the paragraph with the term “a self-regulatory organization.”¹²⁵ The Commission is amending the paragraph substantially as proposed but adding the phrase “a registered national securities association or a registered national securities exchange” rather than the term “a self-regulatory organization” in order to more accurately reflect the nature of the entities listed in the paragraph prior to these amendments. The Commission is also redesignating this paragraph as paragraph (a)(12)(i)(I) of Rule 17a-3.

As discussed in more detail in section II.E.1. of this release, the Commission is adopting a limited alternative compliance mechanism in Rules 17a-3 and 18a-5.¹²⁶ The provisions of the limited alternative compliance mechanism are in paragraph (b) of Rule 17a-3 and in paragraph (c) of Rule 18a-5. As a result, the Commission is redesignating paragraphs (b) through (g) of Rule 17a-5 as paragraphs (c) through (g) and is redesignating proposed paragraph (c) of Rule 18a-5 as paragraph (d).

The Commission also is amending paragraph (b) of Rule 17a-3 (and, as mentioned above, is redesignating it as paragraph (c)). Paragraph (b)(1) was designed to avoid duplication so that an introducing broker-dealer will not be required to make and keep current the same records that would customarily be made by the firm’s clearing broker-dealer. However, the language in paragraph (b)(1) beginning with the phrase “*Provided, That*” is outdated insofar as it references a capital standard that has been superseded, and the Commission is deleting it accordingly. In revising paragraph (b)(1), the intent of the provision – to avoid the duplicative creation of records related to transactions introduced by one broker or dealer and cleared by a

¹²⁴ See paragraph (a)(11) of Rule 17a-3, as amended.

¹²⁵ See paragraph (a)(12) of Rule 17a-3, as amended.

¹²⁶ See paragraph (b) of Rule 17a-3, as amended; paragraph (c) of Rule 18a-5, as adopted.

different broker or dealer – remains the same. However, the Commission is eliminating the outdated capital standard reference.¹²⁷ The Commission is also deleting paragraph (b)(2), as it would be redundant of paragraph (b) of Rule 17a-3, as amended.

The Commission is deleting paragraphs (c) and (d) of Rule 17a-3. Paragraph (c) references instruments such as U.S. Defense Savings Stamps and U.S. Defense Savings Bonds that are no longer widely circulated and thus a specific carve-out for these instruments from the general rule set forth in paragraph (a) of Rule 17a-3 is no longer appropriate.¹²⁸ Paragraph (d) provides a *de minimis* exception from paragraph (a) of Rule 17a-3 for any cash transaction of \$100 or less involving only subscription rights or warrants which by their terms expire within 90 days after their issuance. This exception was adopted in 1953 to reduce the burden and expense of making accounting entries for these transactions. The burden associated with these accounting entries is no longer significant in light of the technological advances in recordkeeping systems since 1953.¹²⁹ In addition, the removal of this exception will affect only a small number of transactions. As a consequence of the removal of paragraphs (c) and (d) from Rule 17a-3, paragraphs (e), (f), (g), and (h) are being redesignated as paragraphs (d), (e), (f), and (g), respectively.

Paragraph (e) of Rule 17a-3 references Municipal Securities Rulemaking Board (“MSRB”) Rule G-8 and states that compliance with that rule will be deemed to be compliance with this section. The Commission is

¹²⁷ Paragraph (c) of Rule 17a-3, as amended, provides that a broker or dealer registered pursuant to Section 15 of the Act, that introduces accounts on a fully-disclosed basis, is not required to make or keep such records of transactions cleared for such broker or dealer as are made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a-3 and 240.17a-4. Nothing herein will be deemed to relieve such broker or dealer from the responsibility that such books and records be accurately maintained and preserved as specified in §§ 240.17a-3 and 240.17a-4.

¹²⁸ The Defense Savings Bond initiated by the U.S. Treasury and the U.S. Defense Savings Stamps introduced by the U.S. Postal Service were measures to finance the U.S. effort in World Wars I and II. The bonds matured in 10 years from the date of issuance. The Defense Savings Bonds were replaced by Series E savings bonds, which ceased to be issued as of June 1980. Today, these instruments are not widely held and are valued more as collectibles than for their face value. *See information available at www.treasurydirect.gov.*

¹²⁹ *See Preservation of Records and Reports of Certain Stabilizing Activities*, 18 FR 2879 (May 19, 1953) (“It has been pointed out to the Commission that the accounting entries appropriate in the case of the usual securities transaction are unnecessarily burdensome and expensive as to these rights transactions because of the small sums involved and because in many cases there is no continuing relationship between the customer and the firm”).

adding the phrase “or any successor rule” to the reference to Rule G-8 so that the reference does not become superseded over time.

The Commission also made a number of non-substantive modifications to the text of Rule 18a-5 in addition to the modifications discussed above in section II.A.2.a. of this release.¹³⁰

¹³⁰ In particular, the Commission made the following changes to Rule 18a-5, as adopted: (1) removing “such” from the phrase “Each such security-based swap dealer” in paragraph (a) for consistency with paragraph (b) of Rule 18a-5, as adopted; (2) replacing “if any contract price” with “if any (including the financial terms for security-based swaps)” in paragraph (a)(1) for consistency with paragraph (b)(1) of Rule 18a-5, as adopted; (3) adding “such securities were” before the phrase “purchase or received or to whom sold or delivered” in paragraphs (a)(1) and (b)(1) for consistency with paragraph (a)(1) of Rule 17a-3, as amended; (4) replacing “purchase or sale” with “transactions” in the third sentence of paragraphs (a)(1) and (b)(1) for consistency with paragraph (a)(1) of Rule 17a-3, as amended; (5) replacing “the termination or maturity date” with “the scheduled termination date” in paragraphs (a)(1), (3), and (5) and (b)(1), (2), and (4) for consistency with paragraph (a)(1) of Rule 17a-3, as amended; (6) replacing the phrase “the notional amount” with “the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed” in paragraphs (a)(1), (3), and (5) and (b)(1), (2), and (4) for consistency with paragraph (a)(1) of Rule 17a-3, as amended; (7) adding “counterparty’s” before the phrase “legal entity identifier” in paragraphs (a)(1), (3), (5), and (15) and (b)(1), (2), (4), and (11) for consistency with paragraph (a)(1) of Rule 17a-3, as amended; (8) removing “,” after “expense” in paragraph (a)(2) for consistency with paragraph (a)(2) of Rule 17a-3, as amended; (9) adding “(including security-based swaps)” after the phrase “deliveries of securities” in paragraphs (a)(3) and (b)(2) for consistency with paragraph (a)(3) of Rule 17a-3, as amended; (10) replacing “,” with “;” after the phrase “all other debits and credits to such account” in paragraph (a)(3) for consistency with paragraph (a)(3) of Rule 17a-3, as amended; (11) replacing “in the case of security-based swap” with “for a security-based swap” in paragraph (a)(3) for consistency with paragraph (a)(3) of Rule 17a-3, as amended, and paragraph (b)(2) of Rule 18a-5, as adopted; (12) removing “ledger accounts (or other records) itemizing separately,” in paragraph (a)(3) for consistency with paragraph (a)(3) of Rule 17a-3, as amended, and paragraph (b)(2) of Rule 18a-5, as adopted; (13) replacing “subject” with “subjects” in paragraph (a)(4)(i) for consistency with paragraph (a)(5)(i) of Rule 17a-3, as amended, and paragraph (b)(3)(i) of Rule 18a-5, as adopted; (14) adding “for” before the phrase “the account of its customers” in paragraph (a)(4)(i) for consistency with paragraph (a)(5)(i) of Rule 17a-3, as amended, and paragraph (b)(3)(i) of Rule 18a-5, as adopted; (15) replacing “locations” with “location” in paragraph (a)(4)(i) for consistency with paragraph (a)(5)(i) of Rule 17a-3, as amended, and paragraph (b)(3)(i) of Rule 18a-5, as adopted; (16) removing the “,” after the phrase “in all cases” in paragraph (a)(4)(i) for consistency with paragraph (a)(5)(i) of Rule 17a-3, as amended, and paragraph (b)(3)(i) of Rule 18a-5, as adopted; (17) replacing “§240.15Fi-1” with “§240.15Fi-2” in paragraphs (a)(6) and (15) and (b)(11) to reflect a change in reference; (18) replacing “security-based swap dealer, major security-based swap participant” with “security-based swap dealer or major security-based swap participant” in paragraphs (a)(10)(ii) and (b)(8)(ii) for grammatical correctness and internal consistency; (19) removing “,” after “§ 240.15Fh-5” in paragraph (a)(17) for consistency with paragraph (a)(30) of Rule 17a-3, as amended, and paragraph (b)(13) of Rule 18a-5, as adopted; (20) replacing “a security-based swap dealer or a major security based swap participant” with “such” in paragraph (b)(1) for clarity; (21) replacing “if any (includes the contract price for security-based swaps)” with “(if any, including the financial terms for security-based swaps)” in paragraph (b)(1) for consistency with paragraph (a)(1) of Rule 17a-3, as amended; (22) replacing “and in addition, for security-based swaps” with “and in addition, for a security-based swap” in paragraph (b)(2) for consistency with paragraph (a)(3) of Rule 17a-3, as amended, and paragraph (a)(3) of Rule 18a-5, as adopted; (23) replacing “the time of cancellation, if applicable” with “the time of execution or cancellation” in paragraph (b)(4) for consistency with paragraph (a)(6)(i)(A) in Rule 17a-3, as adopted; (24) changing the fourth sentence in paragraph (b)(4) to read “An order entered pursuant to the exercise of discretionary authority by the security-based swap dealer or major security-based swap participant, or associated person thereof, must be so designated.” for consistency with paragraph (a)(6)(i)(A) in Rule 17a-3, as adopted; (25) adding a citation to 15 U.S.C. 78c(a)(70) to paragraph (c)(1) for internal consistency; (26) replacing “The term, as to a person supervised by a prudential regulator,” in paragraph (c)(2) with “The term *associated person*, as to an entity supervised by a prudential regulator” to clarify that the term referenced in the paragraph is “associated person”; (27) adding parentheses around the phrase “if any, including the financial terms for security-based swaps” in paragraph (b)(1) for consistency with paragraph (a)(1) of Rule 17a-3, as amended; (28) replacing “will” with “does” in paragraph (h)(4) of Rule 17a-3, as amended, for consistency with Section 3(a)(70) of the Exchange Act; and (29) consolidating paragraphs (a)(19) and (b)(15) and designating it paragraph (c) and redesignating paragraph (c) as paragraph (d).

3. Record Maintenance and Preservation Requirements

Rule 17a-4 requires a broker-dealer to preserve certain types of records if it makes or receives them. The rule also prescribes the time period that these records and the records required to be made and kept current under Rule 17a-3 must be preserved and the manner in which they must be preserved. The Commission is adopting amendments to Rule 17a-4 that are designed to account for the security-based swap activities of broker-dealers, including broker-dealer SBSs and MSBSs.¹³¹ The Commission also is adopting a number of largely technical amendments to Rule 17a-4. The Commission is adopting Rule 18a-6 – which is modeled on Rule 17a-4, as amended – to establish record maintenance and preservation requirements for stand-alone and bank SBSs and MSBSs. Rule 18a-6 does not include a parallel requirement for every requirement in Rule 17a-4.¹³² In addition, the recordkeeping requirements in Rule 18a-6 applicable to bank SBSs and MSBSs are more limited in scope than the requirements in the rule applicable to stand-alone SBSs and MSBSs.

a. Rule 17a-4 and Rule 18a-6

Undesignated Introductory Paragraph

The Commission proposed adding an undesignated introductory paragraph to Rule 17a-4 explaining that the rule applies to a broker-dealer, including a broker-dealer SBS or MSBS, while a stand-alone or bank SBS or MSBS is subject to Rule 18a-6.¹³³ Similarly, the Commission proposed an undesignated introductory paragraph to Rule 18a-6 explaining that the rule would apply to a stand-alone or bank SBS or MSBS, while a broker-dealer SBS or MSBS is subject to Rule 17a-4. The Commission received no comments on the proposed undesignated introductory paragraphs to Rules 17a-4 and 18a-6 and is adopting

¹³¹ Broker-dealer SBSs and MSBSs are subject to all the record maintenance and preservation requirements applicable to broker-dealers under Rule 17a-4, as amended, plus the additional requirements specifically applicable only to SBSs and MSBSs.

¹³² The Commission did not propose to include in Rule 18a-6 requirements that would parallel the requirements in paragraphs (b)(11), (g), (h), (k), and (l) of Rule 17a-4, as amended. These requirements relate to activities that would not be relevant to stand-alone SBSs or MSBSs. Other requirements in Rule 17a-4, as amended, not included as parallel requirements in Rule 18a-6, as adopted, are discussed below.

¹³³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25211.

them with non-substantive modifications to clarify which rule (17a-4 or 18a-6) applies to a given type of entity.¹³⁴

*Six Year Preservation Requirement for Certain
Rule 17a-3 and Rule 18a-5 Records*

Paragraph (a) of Rule 17a-4 provides that brokers-dealers subject to Rule 17a-3 must preserve for a period of not less than six years, the first two years in an easily accessible place, certain categories of records required to be made and kept current under Rule 17a-3 (the “six year preservation requirement”).¹³⁵ Consequently, under this existing requirement, broker-dealer SBSDs and MSBSPs are required to preserve for six years the same categories of records as stand-alone broker-dealers. As discussed above, paragraphs (a) and (b) of Rule 18a-5 contain certain recordkeeping requirements that parallel existing requirements in Rule 17a-3, as amended. Under these parallel requirements, stand-alone and bank SBSDs and MSBSPs must make and keep current certain categories of records that broker-dealers must maintain pursuant to the six year preservation requirement in Rule 17a-4. Consequently, as proposed, paragraphs (a)(1) and (2) of Rule 18a-6 would require that these categories of records must be preserved for a period of not less than six years, the first two years in an easily accessible place.¹³⁶ The Commission received no comments on paragraphs (a)(1) and (2) of proposed Rule 18a-6 and is adopting them as proposed.¹³⁷

*Three Year Preservation Requirement for Certain
Rule 17a-3 and Rule 18a-5 Records*

Paragraph (b)(1) of Rule 17a-4 provides that broker-dealers subject to Rule 17a-3 must preserve for at least three years, the first two years in an easily accessible place, certain records required to be made and kept

¹³⁴ See undesignated introductory paragraph of Rule 17a-4, as amended; undesignated introductory paragraph of Rule 18a-6, as adopted.

¹³⁵ Specifically, the six-year preservation requirement applies to records required under paragraphs (a)(1) through (3), (5), (21), and (22) of Rule 17a-3, as amended.

¹³⁶ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25211-12.

¹³⁷ See paragraphs (a)(1) and (2) of Rule 18a-6, as adopted.

current under Rule 17a-3 (the “three year preservation requirement”).¹³⁸ The Commission did not propose to amend or change any of the existing cross-references to Rule 17a-3 in paragraph (b)(1) of Rule 17a-4. The Commission did, however, propose adding cross-references to certain new paragraphs that are being added to Rule 17a-3 to address security-based swap activities of broker-dealers, including broker-dealer SBSBs and MSBSBs.¹³⁹ As discussed above, paragraphs (a) and (b) of Rule 18a-5 require stand-alone and bank SBSBs and MSBSBs make and keep current certain categories of records that broker-dealers must maintain pursuant to the three year preservation requirement, as amended to incorporate the new records relating to security-based swap activities. Consequently, as proposed, paragraphs (b)(1) and (2) of Rule 18a-6 would similarly require that these categories of records be preserved for a period of not less than three years, the first two years in an easily accessible place. The Commission received no comments on these proposed preservation requirements and is adopting them substantially as proposed.¹⁴⁰

*Three Year Preservation Requirement
for Certain Other Records*

¹³⁸ Specifically, paragraph (b)(1) of Rule 17a-4 applies the three-year preservation requirement to the records required to be made and kept current under paragraphs (a)(4), (6) through (10), (16), and (18) through (20) and (e) of Rule 17a-3, as amended. Prior to these amendments, Rule 17a-4 did not cross-reference paragraph (a)(11) of Rule 17a-3. The Commission is correcting this omission by adding a cross reference to paragraph (a)(11) of Rule 17a-3 in paragraph (b)(1) of Rule 17a-4, as amended. This requires broker-dealers to preserve these records for three years, the first two years in an easily accessible place. Based on staff experience, the Commission believes that broker-dealers have been preserving these records in a manner consistent with this requirement.

¹³⁹ *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25212.

¹⁴⁰ *See* paragraph (b)(1) of Rule 17a-4, as amended; paragraphs (b)(1) and (2) of Rule 18a-6, as adopted. The Commission is adopting the following stylistic and corrective changes: (1) removing the reference to paragraph (a)(24) of Rule 17a-3 since that paragraph is not being adopted as proposed; (2) replacing “made pursuant to paragraphs § 240.18a-5(a)(1), (a)(2), (a)(3), and (a)(4)” with “made pursuant to § 240.18a-5(a)(1) through (4)” in paragraph (a)(1) of Rule 18a-6, as adopted, for grammatical correctness; (3) replacing “made pursuant to paragraphs § 240.18a-5(b)(1), (b)(2), and (b)(3)” with “made pursuant to § 240.18a-5(b)(1) through (3)” in paragraph (a)(2) of Rule 18a-6, as adopted, for grammatical correctness; (4) replacing “;” with “.” for each paragraph in Rule 18a-6, as adopted, for internal consistency; (5) removing “as applicable” in paragraph (b)(1)(viii) of Rule 18a-6, as adopted, as it is not necessary since only Part II is referenced in Rule 18a-6, as adopted; (6) replacing “security-based swap customers” with “non-security-based swap customers” in paragraph (b)(1)(viii)(B) of Rule 18a-6, as adopted, to correct an error and for consistency with paragraph (b)(8)(ii) of Rule 17a-4, as amended; (7) removing “,” after “cost” in paragraph (b)(1)(viii)(H) of Rule 18a-6, as adopted, for consistency with paragraph (b)(8)(ix) of Rule 17a-4, as amended; (8) removing “;” after “and” in paragraph (b)(1)(viii)(N) of Rule 18a-6, as adopted, for consistency with paragraph (b)(8)(xvi) of Rule 17a-4, as amended; (9) removing “Records which contain” in paragraph (b)(2)(v) of Rule 18a-6, as adopted, for clarity; and (10) replacing “; and” with “.” in paragraph (b)(2)(vii) of Rule 18a-6, as adopted, for internal consistency.

Paragraphs (b)(2) through (13) of Rule 17a-4 also provide that a broker-dealer subject to Rule 17a-3 must preserve for a period of not less than three years, the first two years in an easily accessible place, other categories of records if the broker-dealer makes or receives the record. These are not categories of records a broker-dealer is required to make and keep current under Rule 17a-3 but rather types of records that a broker-dealer may make or receive in the ordinary course of business. As discussed in more detail below, the Commission proposed to amend certain of the provisions in paragraphs (b)(2) through (13) of Rule 17a-4 to account for security-based swaps and to require that broker-dealers, including broker-dealer SBSs and MSBSs, preserve certain additional records related to security-based swap activities.¹⁴¹ Further, as discussed below, the Commission proposed requirements in paragraph (b) of Rule 18a-6 that would require stand-alone and bank SBSs and MSBSs to preserve similar records.

In addition, the categories of records identified in paragraphs (b)(3) through (5) and (7) of Rule 17a-4 must be retained only if they relate to the broker-dealer's *business as such* (i.e., business as a broker-dealer). Security-based swap activities of a broker-dealer that is not registered as an SBS or MSBS are part of the broker-dealer's business as such for the purposes of Rule 17a-4 just like activities relating to other types of securities. In the case of a broker-dealer SBS or MSBS, the Commission proposed to amend Rule 17a-4 to clarify that the business as such of these entities would include the firm's business as an SBS or MSBS.¹⁴² The Commission received no comment on the proposed definition and is adopting it substantially as proposed.¹⁴³

Bank Records

Paragraph (b)(2) of Rule 17a-4 requires a broker-dealer, including a broker-dealer SBS or MSBS, to preserve all check books, bank statements, cancelled checks, and cash reconciliations. The Commission did not

¹⁴¹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25212-13.

¹⁴² See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25213.

¹⁴³ See paragraph (m)(5) of Rule 17a-4, as amended. The definition as adopted is shorter than proposed to improve clarity and now reads: “[t]he term *business as such* includes security-based swap activity.”

propose to amend this paragraph to specifically account for security-based swaps. However, the Commission did propose a parallel requirement in Rule 18a-6 applicable to stand-alone SBSBs and MSBSPs.¹⁴⁴ The Commission received no comments on this proposed bank record preservation requirement and is adopting it as proposed.¹⁴⁵

Bills

Paragraph (b)(3) of Rule 17a-4 requires a broker-dealer, including a broker-dealer SBSB or MSBSP, to preserve all bills receivable or payable, paid or unpaid, relating to the business of the broker-dealer. The Commission proposed a parallel requirement in Rule 18a-6 that would require stand-alone SBSBs and MSBSPs to preserve these types of bills.¹⁴⁶ The Commission received no comments on this proposed bill preservation requirement and is adopting it as proposed.¹⁴⁷

Communications

Paragraph (b)(4) of Rule 17a-4 requires a broker-dealer, including a broker-dealer SBSB or MSBSP, to preserve originals of all communications received and copies of all communications sent (and any approvals thereof) by the broker-dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to the rules of a self-regulatory organization (“SRO”) of which the broker-dealer is a member regarding communications with the public.¹⁴⁸ The term “communications,” as used in paragraph (b)(4) of Rule 17a-4, includes all electronic communications (*e.g.*, emails and instant messages).¹⁴⁹ Communications related to security-based swap activities would be

¹⁴⁴ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25213.

¹⁴⁵ See paragraph (b)(1)(ii) of Rule 18a-6, as adopted.

¹⁴⁶ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25213.

¹⁴⁷ See paragraph (b)(1)(iii) of Rule 18a-6, as adopted.

¹⁴⁸ Paragraph (b)(4) of Rule 17a-4 further provides that the term *communications* as used in the paragraph includes sales scripts.

¹⁴⁹ See, *e.g.*, *Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940*, Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996), at n. 32; *Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934*, Exchange Act Release No. 38245 (Feb. 5, 1997), 62 FR 6469 (Feb. 12, 1997); *Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934*, Exchange Act Release No. 44992 (Oct. 26, 2001) 66 FR 55818, 55825 (Nov. 2, 2001).

communications relating to the business as such of a broker-dealer, including a broker-dealer SBSD and MSBSP.

The Commission had not previously interpreted the term “communications” to include telephonic communications. However, Section 15F(g)(1) of the Exchange Act provides that each registered SBSD and MSBSP shall maintain daily trading records of the security-based swaps of the registered SBSD or MSBSP and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and *recordings of telephone calls*, for such period as may be required by the Commission by rule or regulation. Therefore, to implement Section 15F(g)(1) of the Exchange Act, the Commission proposed amendments to the preservation requirement in paragraph (b)(4) of Rule 17a-4 to require recordings of telephone calls required to be maintained pursuant to Section 15F(g)(1) of the Exchange Act.¹⁵⁰ Under this requirement, a broker-dealer SBSD or MSBSP would be required to preserve for three years telephone calls that it records to the extent the recordings are required to be maintained pursuant to Section 15F(g)(1). The Commission proposed communication preservation requirements for stand-alone and bank SBSDs and MSBSPs that would parallel those in Rule 17a-4, as proposed to be amended, to further implement Section 15F(g)(1). The provision applicable to bank SBSDs and MSBSPs would limit the requirement to communications that relate to the business of an SBSD or MSBSP.

The Commission emphasizes that the Section 15(g)(1) of the Exchange Act and the new rules requiring the *retention* of telephone calls do not establish requirements to *record* telephone calls. Instead, the rules require firms to retain recordings of telephone calls that are within the scope of Section 15(g)(1) of the Exchange Act. Thus, if the firm records a telephone call voluntarily or for some other reason, it will need to retain the recording if the call falls within the scope of Section 15(g)(1) of the Exchange Act. However, a firm’s decision not to record a telephone call that falls within the scope of Section 15(g)(1) of the Exchange Act will not implicate these new retention requirements.

¹⁵⁰ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25213-14.

A commenter urged the Commission to apply a one-year retention requirement as was adopted by the CFTC with respect to retaining recordings of telephone calls.¹⁵¹ In response, the Commission notes that applying the three-year retention requirement to these recordings is designed to allow staff examiners access to records they may need to review the past activities of SBSBs and MSBSBs, given that examinations are conducted using a risk-based program. In addition, the Commission believes that a three-year retention period will benefit counterparties in that it will preserve information that may help support them if, for example, a dispute arises about a transaction with an SBSB or MSBSB. A three-year retention period also is consistent with the retention period applicable to the vast majority of broker-dealer records, as compared to a one year period. Further, although the CFTC requires registrants to make and keep records of *all* oral communications pertaining to pre-execution trade information, including telephone calls, the Commission’s record retention rule applies only to *recordings* of telephone calls, *i.e.*, those voluntarily made by the registrant.¹⁵² The Commission is adopting the communications preservation requirements as proposed.¹⁵³

Trial Balances

Paragraph (b)(5) of Rule 17a-4 requires a broker-dealer, including a broker-dealer SBSB or MSBSB, to preserve all trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations, and internal audit working papers relating to the firm’s business as a broker-dealer. The Commission proposed including a parallel requirement in Rule 18a-6 applicable to stand-alone SBSBs and MSBSBs.¹⁵⁴ In contrast to Rule 17a-4, the provision in Rule 18a-6, as proposed, did not refer to computations of “aggregate indebtedness” because the proposed capital rules for stand-alone SBSBs and MSBSBs – Rules 18a-1 and 18a-2, respectively – did not include such a

¹⁵¹ See SIFMA 9/5/2014 Letter.

¹⁵² See 17 CFR 23.202(a)(1) (requiring CFTC-registered swap dealers and major swap participants to “make and keep pre-execution trade information, including, at a minimum, records of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a swap, whether communicated by telephone...”).

¹⁵³ See paragraph (b)(4) of Rule 17a-4, as amended; paragraphs (b)(1)(iv) and (b)(2)(ii) of Rule 18a-6, as adopted.

¹⁵⁴ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25214.

calculation.¹⁵⁵ Further, to account for the capital standard for stand-alone MSBSPs, the proposed requirement referred to tangible net worth.¹⁵⁶ The Commission received no comments on the proposal and adopted Rules 18a-1 and 18a-2.¹⁵⁷ Consequently, the Commission is adopting the trial balance preservation requirements as proposed.¹⁵⁸

Account Documents

Paragraph (b)(6) of Rule 17a-4 requires a broker-dealer, including a broker-dealer SBSD or MSBSP, to preserve all guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account as well as copies of resolutions empowering an agent to act on behalf of a corporation. The Commission proposed parallel requirements in Rule 18a-6 for stand-alone and bank SBSDs and MSBSPs to preserve similar types of records, but only with respect to security-based swap accounts.¹⁵⁹ For example, bank SBSDs and MSBSPs would not be required to maintain these records with respect to accounts involving exclusively banking related services. The Commission received no comments on the proposed account documentation preservation requirements and is adopting them as proposed.¹⁶⁰

Written Agreements

Paragraph (b)(7) of Rule 17a-4 requires a broker-dealer, including a broker-dealer SBSD or MSBSP, to preserve all written agreements (or copies thereof) entered into by the firm relating to its business as such, including agreements with respect to any account. The Commission proposed to amend this paragraph to require the preservation of written agreements with respect to a security-based swap customer or non-customer – including governing documents or any document establishing the terms and conditions of security-based

¹⁵⁵ See *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70221-29.

¹⁵⁶ See *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70256-57. A broker-dealer MSBSP is subject to the net capital requirements in Rule 15c3-1.

¹⁵⁷ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 44052-68.

¹⁵⁸ See paragraph (b)(1)(v) of Rule 18a-6, as adopted.

¹⁵⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25214.

¹⁶⁰ See paragraphs (b)(1)(vi) and (b)(2)(iii) of Rule 18a-6, as adopted.

swaps of the customer or non-customer – with the account records of the customer or non-customer.¹⁶¹ The Commission proposed parallel requirements in Rule 18a-6 for stand-alone and bank SBSBs and MSBSPs. The provision applicable to bank SBSBs and MSBSPs would limit the preservation requirement to written agreements relating to the registrant’s business as an SBSB or MSBSP. The Commission received no comments on the proposed written agreement preservation requirements and is adopting them substantially as proposed.¹⁶²

Information Supporting Financial Reports

Paragraphs (b)(8)(i) through (xv) of Rule 17a-4 require a broker-dealer, including a broker-dealer SBSB or MSBSP, to preserve records containing various types of information that support amounts included in the broker-dealer’s FOCUS Report prepared as of the broker-dealer’s audit date and amounts in the annual audited financial statements the broker-dealer is required to file under Rule 17a-5 or 17a-12, as applicable. The paragraphs specifically identify the types of supporting information that must be preserved, including money balances, securities positions (which will include security-based swap positions), futures positions, commodity positions, and options positions, among other things.

The Commission proposed to: (1) amend certain of these paragraphs to require the preservation of the same type of supporting information required of commodity positions, but for swap positions; (2) add a paragraph to require a broker-dealer SBSBs to preserve records that contain detail relating to the calculation of the risk margin amount under the proposed SBSB capital rules; and (3) add a new paragraph to require broker-

¹⁶¹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25214.

¹⁶² See paragraph (b)(7) of Rule 17a-4, as amended; paragraphs (b)(1)(vii) and (b)(2)(iv) of Rule 18a-6, as adopted. The Commission is adopting the following stylistic and corrective changes: (1) replacing “;” with “.” for each paragraph in Rule 18a-6 for internal consistency; (2) removing “as applicable” in paragraph (b)(1)(viii) of Rule 18a-6, as adopted, as it is not necessary since only Part II is referenced in Rule 18a-6, as adopted; (3) replacing “security-based swap customers” with “non-security-based swap customers” in paragraph (b)(1)(viii)(B) of Rule 18a-6, as adopted, to correct an error and for consistency with paragraph (b)(8)(ii) of Rule 17a-4, as amended; (4) removing “,” after “cost” in paragraph (b)(1)(viii)(H) of Rule 18a-6, as adopted, for consistency with paragraph (b)(8)(ix) of Rule 17a-4, as amended; (5) removing “;” after “and” in paragraph (b)(1)(viii)(N) of Rule 18a-6, as adopted, for consistency with paragraph (b)(8)(xvi) of Rule 17a-4, as amended; (6) removing “Records which contain” in paragraph (b)(2)(v) of Rule 18a-6, as adopted, for clarity; (7) replacing “; and” with “.” in paragraph (b)(2)(vii) of Rule 18a-6, as adopted, for internal consistency.

dealer SBSDs to preserve records containing detail relating to the possession or control requirements in the proposed SBSB segregation rule.¹⁶³ The Commission proposed requirements in Rule 18a-6 for stand-alone SBSBs and MSBSPs that paralleled the requirements in paragraphs (b)(8)(i) through (xv) of Rule 17a-4, as proposed to be amended. Finally, the Commission proposed that bank SBSBs preserve records containing detail relating to the possession or control requirements in the proposed SBSB segregation rule (but not any of the other preservation requirements). The Commission received no comments on these proposals and has adopted the SBSB capital rules requiring a risk margin amount calculation and the SBSB segregation rules prescribing a possession or control requirement.¹⁶⁴ Consequently, the Commission is adopting the information supporting financial statement preservation requirements substantially as proposed.¹⁶⁵

Rule 15c3-4 Risk Management Records

OTC derivatives dealers and ANC broker-dealers are subject to risk management requirements.¹⁶⁶ In particular, Rule 15c3-4 requires these broker-dealers to establish, document, and maintain a system of internal risk management controls to assist in managing the risks associated with the firm's business activities, including

¹⁶³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25214-16. See *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70221-24, 70278-82 (discussing the proposed risk margin amount and possession or control requirements respectively).

¹⁶⁴ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43883-86 (risk margin amount calculation), 43935-38 (possession or control requirement).

¹⁶⁵ See paragraph (b)(8) of Rule 17a-4, as amended; paragraphs (b)(1)(viii) and (b)(2)(v) of Rule 18a-6, as adopted. The adopted rule text modifies the proposed rule text in the following non-substantive ways. The Commission proposed to amend paragraph (b)(8) of Rule 17a-4 to add a reference to proposed Form SBS in the introductory text after references to certain parts of the FOCUS Report. It is no longer necessary to include this cross-reference, because as discussed below, the Commission is revising Part II and adopting Part IIC of the FOCUS Report instead of adopting Form SBS. However, non-substantive changes in connection with those revisions are being made to improve the clarity of paragraph (b)(8); namely, references to the parts of Form X-17A-5 now read "Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter)" to improve readability, and the word "audited" is being removed from the phrase "annual audited financial statements" for consistency with Rules 17a-5 and 18a-7. Paragraph (b)(1)(viii) of Rule 18a-6, as adopted, reflects the following technical changes from paragraph (b)(1)(viii) of Rule 18a-6, as proposed to be adopted: (1) Paragraph (b)(1)(viii) references "Part II of Form X-17A-5 (§ 249.617 of this chapter)" instead of "Part II of Form X-17A-5 (§ 249.617 of this chapter), as applicable," because there is no need to reference "as applicable" when only one part of Form X-17A-5 is being referenced; (2) paragraph (b)(1)(viii)(B) refers to "non-security-based swap customers" instead of "security-based swap customers" for consistency with paragraph (b)(8)(ii) of Rule 17a-4, as amended; (3) paragraph (b)(1)(viii)(H) no longer includes a comma after the word "cost" for consistency with paragraph (b)(8)(ix) of Rule 17a-4, as amended; and (4) paragraph (b)(1)(viii)(N) no longer includes a semicolon after the word "and" for consistency with paragraph (b)(8)(xvi), as amended.

¹⁶⁶ See 17 CFR 240.15c3-4 ("Rule 15c3-4").

market, credit, leverage, liquidity, legal, and operational risks. The rule also requires periodic reviews (which may be performed by internal audit staff) and annual reviews (which must be conducted by independent public accountants) of the firm's risk management systems. Paragraph (b)(10) of Rule 17a-4 requires broker-dealers subject to Rule 15c3-4 to preserve the records required to be made under the rule and the results of the periodic reviews required to be conducted under the rule.

The Commission proposed that nonbank SBSBs and MSBSPs be required to comply with Rule 15c3-4.¹⁶⁷ Broker-dealer SBSBs will be subject to paragraph (b)(10) of Rule 17a-4. The Commission proposed a parallel provision in Rule 18a-6 to require nonbank SBSBs and MSBSPs to preserve the same types of records relating to Rule 15c3-4.¹⁶⁸ The Commission did not propose that bank SBSBs and MSBSPs comply with Rule 15c3-4¹⁶⁹ and thus did not propose a parallel record preservation requirement for these entities. The Commission received no comments on these proposals and has adopted the requirement that nonbank SBSBs and MSBSPs comply with Rule 15c3-4.¹⁷⁰ Consequently, the Commission is adopting the risk management records preservation requirements as proposed.¹⁷¹

Credit Risk Determinations

Paragraph (c)(4)(vi)(A) of § 240.15c3-1e (appendix E to Rule 15c3-1) requires an ANC broker-dealer to make and keep current a record of the basis of its internal credit assessments of counterparties for purposes of the credit risk charges it must take as part of its net capital computation. Paragraph (b)(12) of Rule 17a-4 requires an ANC broker-dealer to preserve these records. A broker-dealer SBSB approved to use models to compute net capital will be subject to the recordkeeping provision in paragraph (c)(4)(vi)(A) of appendix E to Rule 15c3-1 and the corresponding record preservation requirement in paragraph (b)(12) of Rule 17a-4. The

¹⁶⁷ See *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70250-51, 70256-57.

¹⁶⁸ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25216.

¹⁶⁹ See Section 15F(d)(2)(A) of the Exchange Act (providing that the Commission may not prescribe rules imposing prudential requirements on SBSBs and MSBSPs for which there is a prudential regulator).

¹⁷⁰ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43906-07.

¹⁷¹ See paragraph (b)(1)(ix) of Rule 18a-6, as adopted.

proposed capital rule for SBSDs included a parallel provision requiring a stand-alone SBSB approved to use models to make and keep current the same type of record of the basis of its internal credit assessments of counterparties.¹⁷² Therefore, the Commission proposed a parallel corresponding record preservation requirement in Rule 18a-6 for such a stand-alone SBSB.¹⁷³ The Commission received no comments on the proposal and adopted the requirement in the capital rule for stand-alone SBSBs to make and keep current these records.¹⁷⁴ Consequently, the Commission is adopting the credit risk determination preservation record requirement as proposed.¹⁷⁵

Regulation SBSR

As discussed above, the Commission has adopted Regulation SBSR, which assigns the duty to report a security-based swap transaction to a registered SDR.¹⁷⁶ The Commission proposed to amend paragraph (b)(14) of Rule 17a-4 to require that broker-dealers, including broker-dealer SBSBs and MSBSPs, preserve the information they are required to submit to a registered SDR under Regulation SBSR.¹⁷⁷ In addition, the Commission proposed to include parallel preservation requirements in Rule 18a-6 for stand-alone and bank SBSBs. The Commission received no comments on the proposed Regulation SBSR record preservation requirements and is adopting them as proposed.¹⁷⁸

Records Relating to Business Conduct Standards

As discussed above, the Commission has adopted Rules 15Fh-1 through 15Fh-6 and Rule 15Fk-1. These rules require, among other things, that SBSBs and MSBSPs make certain disclosures, provide certain notices, and make other records. The Commission proposed to amend paragraph (b) of Rule 17a-4 to add a

¹⁷² See *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70340.

¹⁷³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25216-17.

¹⁷⁴ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 44060; paragraph (e)(2)(iii)(F)(2) of Rule 18a-1.

¹⁷⁵ See paragraph (b)(1)(x) of Rule 18a-6, as adopted.

¹⁷⁶ See *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 80 FR 14567; *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 81 FR 53546.

¹⁷⁷ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25217.

¹⁷⁸ See paragraph (b)(14) of Rule 17a-4, as amended; paragraphs (b)(1)(xi) and (b)(2)(vi) of Rule 18a-6, as adopted.

requirement that broker-dealer SBSBs and MSBsBs preserve copies of documents, communications, and notices related to the business conduct and chief compliance officer requirements in Rules 15Fh-1 through 15Fh-6 and Rule 15Fk-1.¹⁷⁹ In addition, the Commission proposed to adopt parallel record preservation requirements in Rule 18a-6 for stand-alone and bank SBSBs and MSBsBs. The Commission received no comments on the proposed business conduct record preservation requirements and is adopting them as proposed.¹⁸⁰

Section 15F(h)(4)(C) of the Exchange Act imposes duties on SBSBs that act as advisors to special entities. Paragraph (a) of Rule 15Fh-2 defines what it means to *act as an advisor to a special entity*. If an SBSB is acting in this capacity, Section 15F(h)(4)(C) and paragraph (b) of Rule 15Fh-4 require the SBSB to make reasonable efforts to obtain such information as it 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 special entity. Section 15F(h)(5)(A) and paragraph (a) of Rule 15Fh-5 require an SBSB or MSBsB that is acting as a counterparty to a special entity to have a reasonable basis to believe that the special entity has a “qualified independent representative,” as that term is defined in the rule. The Commission proposed to amend paragraph (b) of Rule 17a-4 to add a requirement that broker-dealer SBSBs and MSBsBs preserve records relating to the determinations made pursuant to Section 15F(h)(4)(C) and Section 15F(h)(5)(A) of the Exchange Act.¹⁸¹ In addition, the Commission proposed parallel record preservation requirements in Rule 18a-6 for

¹⁷⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25217.

¹⁸⁰ See paragraph (b)(15) of Rule 17a-4, as amended; paragraphs (b)(1)(xii) and (b)(2)(vii) of Rule 18a-6, as adopted.

¹⁸¹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25218. As noted above in section II.A.2.a. of this release, on October 31, 2018, the Commission issued a statement, which set forth the Commission’s position that, for a period of five years from the Registration Compliance Date for SBSBs and MSBsBs (as defined in *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 80 FR at 48988 and discussed below in section III.B. of this release), certain actions with respect to specific provisions of the business conduct standards will not provide a basis for a Commission enforcement action. See *Statement on Business Conduct Standards*, 83 FR at 55486. To the extent SBSBs and MSBsBs rely on the statement, the Commission encourages them to maintain records of the written representations described in the statement until such time as the statement is no longer in force.

stand-alone and bank SBSDs. The Commission received no comments on the proposed special entity advisor record preservation requirements and is adopting them as proposed.¹⁸²

Corporate Documents

Paragraph (d) of Rule 17a-4 requires broker-dealers to preserve during the life of the enterprise corporate documents such as articles of incorporation, minute books, and stock certificate books. It also requires broker-dealers to preserve during the life of the enterprise registration and licensing information such as all Forms BD, Forms BDW, and licenses or other documentation showing registration with a securities regulatory authority. The Commission proposed to amend paragraph (d) of Rule 17a-4 to add references to proposed Form SBSE-BD and proposed Form SBSE-W.¹⁸³ These were the registration and withdrawal of registration forms, respectively, the Commission proposed for broker-dealer SBSDs and MSBSPs.¹⁸⁴ The Commission proposed a parallel requirement in Rule 18a-6 for stand-alone and bank SBSDs and MSBSPs, except that rule text referred to the registration forms these entities would use (*i.e.*, Forms SBSE and SBSE-A, respectively) rather than Form SBSE-BD.¹⁸⁵

The Commission received no comments on these proposals and has adopted the forms.¹⁸⁶ However, to correct an inadvertent omission, they now also require preservation of Form SBSE-C (17 CFR 249.1600c).¹⁸⁷

¹⁸² See paragraph (b)(16) of Rule 17a-4, as amended; paragraphs (b)(1)(xiii) and (b)(2)(viii) of Rule 18a-6, as adopted.

¹⁸³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25218.

¹⁸⁴ See *Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants*, Exchange Act Release No. 65543 (Oct. 12, 2011), 76 FR 65784 (Oct. 24, 2011); see also *Cross-Border Proposing Release*, 78 FR 30968.

¹⁸⁵ Paragraph (m)(3) of Rule 17a-4, as amended, defines the term “securities regulatory authority” to have the meaning set forth in paragraph (f)(3) of Rule 17a-3, as amended. Paragraph (h)(1) of Rule 18a-6, as adopted, defines the term “securities regulatory authority” in the same way as that term is defined in paragraph (f)(3) of Rule 17a-3, as amended. The Commission proposed to amend the definition of “securities regulatory authority” to include the CFTC and a prudential regulator to the extent the prudential regulator oversees entity’s security-based swap activities. The Commission believes the better approach is to specifically reference the CFTC and the prudential regulator in a given recordkeeping provision where the inclusion of a reference to the CFTC or prudential regulator is appropriate given the type of registrant and the nature of the records. As a result, the Commission is adding references to the CFTC to paragraph (d) of Rule 17a-4, as amended, and a reference to the CFTC to paragraph (c) of Rule 18a-6, as adopted.

¹⁸⁶ See *Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants*, Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48963 (Aug. 14, 2015).

¹⁸⁷ The paragraphs as adopted contain updated cross-references to the CFR citations for Form SBSE, Form SBSE-A, Form SBSE-BD, and Form SBE-W (*i.e.*, 17 CFR 249.1600, 17 CFR 249.1600a, 17 CFR 249.1600b, and 17 CFR 249.1601, respectively).

The registration rule for SBSBs and MSBSBs requires firms applying to register as an SBSB or MSBSB to file Form SBSE-C (which contains two separate certifications) in addition to Forms SBSE, SBSE-A, and/or SBSE-BD.¹⁸⁸ For these reasons, the Commission is adopting the corporate document preservation requirements with the modifications discussed above.¹⁸⁹

Associated Persons

As discussed above, paragraph (a)(12) of Rule 17a-3 requires a broker-dealer, including a broker-dealer SBSB or MSBSB, to make and keep current records of information about associated persons, and the Commission is adopting parallel requirements in Rule 18a-5 to require a stand-alone or bank SBSB or MSBSB to make and keep current the same types of records.¹⁹⁰ Paragraph (e)(1) of Rule 17a-4 requires broker-dealers to maintain and preserve the associated person's records in an easily accessible place until at least three years after the associated person's employment and any other connection with the broker-dealer has terminated. The Commission proposed to include a parallel requirement in Rule 18a-6 for stand-alone and bank SBSBs and MSBSBs to maintain and preserve their records about associated persons.¹⁹¹ The Commission received no comments on these proposed associated persons record preservation requirements and is adopting them as proposed.¹⁹²

Regulatory Authority Reports

Paragraph (e)(6) of Rule 17a-4 requires a broker-dealer, including a broker-dealer SBSB or MSBSB, to maintain and preserve in an easily accessible place each report that a securities regulatory authority has requested or required the firm to make and furnish to it pursuant to an order of settlement, and each regulatory

¹⁸⁸ See 17 CFR 240.15Fb2-1(a).

¹⁸⁹ See paragraph (d) of Rule 17a-4, as amended; paragraph (c) of Rule 18a-6, as adopted.

¹⁹⁰ See paragraphs (a)(10) and (b)(8) of Rule 18a-5, as adopted.

¹⁹¹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25218.

¹⁹² See paragraph (d)(1) of Rule 18a-6, as adopted. Paragraph (h)(2) of Rule 18a-6, as adopted, defines the term "associated person" to have the same meaning as that term is defined in paragraph (c) of Rule 18a-5, as adopted.

exam report until three years after the date of the report.¹⁹³ The Commission proposed parallel record preservation requirements in Rule 18a-6 for stand-alone SBSBs and MSBSPs to maintain and preserve the same types of reports until three years after the date of the report.¹⁹⁴ The Commission proposed a parallel requirement in Rule 18a-6 for bank SBSBs and MSBSPs but only if the reports relate to security-based swap activities. The Commission received no comments on these proposed regulatory authority reports preservation requirements and is adopting them as proposed.¹⁹⁵

Compliance, Supervisory, and Procedures Manuals

Paragraph (e)(7) of Rule 17a-4 requires a broker-dealer, including a broker-dealer SBSB or MSBSP, to maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions, describing the policies and practices of the broker-dealer with respect to compliance with applicable laws and rules and supervision of the activities of each natural person associated with the broker-dealer until three years after the termination of the use of the manual. The Commission proposed a parallel requirement in Rule 18a-6 for stand-alone SBSBs and MSBSPs to maintain

¹⁹³ As discussed earlier, paragraph (m)(3) of Rule 17a-4 defines the term “securities regulatory authority” to have the meaning set forth in paragraph (f)(3) of Rule 17a-3, as amended. The Commission proposed to amend the definition of “securities regulatory authority” to include the CFTC and a prudential regulator to the extent the prudential regulator oversees security-based swap activities. The Commission believes the better approach is to specifically identify the CFTC and prudential regulator in a given recordkeeping provision where the inclusion of a reference to the CFTC or prudential regulator is appropriate given the type of registrant and the nature of the records. *See* paragraph (f)(3) of Rule 17a-3, as amended. As a result, the Commission is amending paragraph (e)(6) of Rule 17a-4 by adding references to reports requested or required by the CFTC.

¹⁹⁴ *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25218-19.

¹⁹⁵ *See* paragraphs (d)(2)(i) and (ii) of Rule 18a-6, as adopted. The Commission is replacing the term “regulatory authority” with the term “securities regulatory authority” in paragraphs (d)(2)(i) and (ii) of Rule 18a-6, as adopted. Paragraph (h)(1) of Rule 18a-6, as adopted, defines the term securities regulatory authority in the same way as that term is defined in paragraph (f)(3) of Rule 17a-3, as amended. As noted above, the Commission proposed to amend the definition of the term “securities regulatory authority” cross-referenced in paragraph (f)(3) of Rule 17a-3 to include the CFTC and prudential regulators but is declining to do so. In lieu of amending the definition of the term “securities regulatory authority,” the Commission is adding references to reports requested or required by the CFTC to paragraph (d)(2)(i) of Rule 18a-6, as adopted, and to reports requested or required by the CFTC or the prudential regulators to paragraph (d)(2)(ii) of Rule 18a-6, as adopted. The Commission staff consulted with staff from the prudential regulators and the CFTC in drafting the final rules discussed in this release, including paragraph (d)(2)(ii) of Rule 18a-6 (applicable to bank SBSBs and MSBSPs). The Commission recognizes that a bank SBSB or MSBSP may need to notify its prudential regulator(s) before furnishing (pursuant to paragraph (g) of Rule 18a-6) certain records identified in paragraph (d)(2)(ii) of Rule 18a-6.

and preserve the same types of compliance, supervisory, and procedures manuals for the same period of time.¹⁹⁶ The Commission proposed a parallel requirement in Rule 18a-6 for bank SBSBs and MSBSBs but only if the manuals involve compliance with applicable laws and rules relating to security-based swap activities. The Commission received no comments on these proposed compliance, supervisory, and procedures manual preservation requirements and is adopting them as proposed.¹⁹⁷

Electronic Storage

Paragraph (f) of Rule 17a-4 provides that the records a broker-dealer, including a broker-dealer SBSB or MSBSB, is required to maintain and preserve under Rules 17a-3 and 17a-4 may be immediately produced or reproduced on micrographic media or by means of electronic storage media and be maintained and preserved for the required time in that form. The use of electronic storage media is subject to certain conditions, including that the media must preserve the records exclusively in a manner that is non-rewriteable and non-erasable (also known as a write once, read many or “WORM”).¹⁹⁸ The Commission proposed including a parallel record maintenance and preservation requirement in Rule 18a-6, but only with respect to electronic storage media.¹⁹⁹ The Commission believes that SBSBs and MSBSBs that are not dually registered as broker-dealers would not use micrographic media to maintain and preserve records because electronic storage media is more technologically advanced and offers greater flexibility in managing records.²⁰⁰

The Commission received comments that its electronic storage requirements for SBSBs and MSBSBs, including for broker-dealers dually registered as SBSBs, should not mandate that the records be preserved exclusively in a WORM format.²⁰¹ One commenter further urged the Commission, in any event, “not to expand

¹⁹⁶ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25219.

¹⁹⁷ See paragraphs (d)(3)(i) and (ii) of Rule 18a-6, as adopted.

¹⁹⁸ See paragraph (f)(2)(ii)(A) of Rule 17a-4.

¹⁹⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25219.

²⁰⁰ The Commission believes that most broker-dealers use electronic storage media rather than micrographic media for the same reasons.

²⁰¹ See, e.g., SIFMA 9/5/2014 Letter; Letter from Walt L. Lukken, President and Chief Executive Officer, Futures Industry Association (Nov. 29, 2018) (“FIA Letter”).

the WORM requirement to SBSDs at this time.”²⁰² The Commission also received comment requesting that it act on a rule petition filed by several organizations in November 2017 and harmonize its final rule with the CFTC’s corresponding requirements, which were recently modified to eliminate a similar WORM requirement.²⁰³

The Commission’s electronic record storage requirements in Rule 17a-4 are based on the “importance for recordkeeping of ready access, reliability, and permanence of records.”²⁰⁴ The Commission has described the recordkeeping requirements in Rules 17a-3 and 17a-4 as “integral to the Commission’s investor protection function because the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards.”²⁰⁵ Any modification to the electronic storage requirements in Rule 17a-4 may raise issues that are distinct from those raised by stand-alone and bank SBSDs and MSBSPs. Accordingly, the Commission believes that any change to these requirements should be addressed in a separate regulatory initiative in which the Commission intends to consider electronic storage media issues.

However, the Commission is clarifying that the WORM requirement does not mandate the use of a specific type of media. In particular, the Commission issued guidance in 2003 to clarify that the WORM requirement can be met using an “electronic storage system that prevents the overwriting, erasing or otherwise altering of a record during its required retention period through the use of integrated hardware and software control codes.”²⁰⁶ This statement in the release – because it refers to “hardware” control codes – has raised questions as to whether an electronic storage system that relies exclusively on software coding to meet the WORM requirement is permitted under the rule. The Commission is clarifying that a software solution that

²⁰² See, e.g., SIFMA 9/5/2014 Letter.

²⁰³ See FIA Letter. The CFTC modified CEA Rule 1.31 to remove its WORM requirement in May 2017. See *Recordkeeping*, 82 FR 24479 (May 30, 2017).

²⁰⁴ See *Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934*, Exchange Act Release No. 38245 (Jan. 31, 1997), 62 FR 6469 (Feb. 12, 1997).

²⁰⁵ *Electronic Storage of Broker-Dealer Records*, Exchange Act Release No. 47806 (May 7, 2003), 68 FR 25281 (May 12, 2003).

²⁰⁶ *Electronic Storage of Broker-Dealer Records*, 68 FR 25282.

prevents the overwriting, erasing, or otherwise altering of a record during its required retention period would meet the requirements of the rule. For example, the rule does not require the use of a specific medium such as optical disk, CD-ROM, or magnetic tape to meet the WORM requirement.

The Commission recognizes that the entities that may register as stand-alone or bank SBSDs or MSBSPs may have existing electronic storage systems that do not meet the WORM requirement and therefore could incur substantial costs in building a recordkeeping system that meets this requirement. For these reasons, the Commission is modifying Rule 18a-6 to eliminate the requirement that the electronic storage system preserve the records exclusively in a non-rewriteable and non-erasable format (*i.e.*, a WORM format).²⁰⁷ In connection with this modification, the Commission is eliminating the proposed requirement that the stand-alone or bank SBSD or MSBSP notify the Commission at least 90 days before using electronic storage media other than optical disk technology because this provision is no longer relevant given the absence of the WORM requirement in the rule as adopted.²⁰⁸ The Commission also is modifying the proposed rule text by replacing the phrase “electronic storage media” throughout paragraph (e) of Rule 18a-6, as adopted, with the phrase “electronic storage system” to further clarify that the final rule does not require the use of a particular storage *media* such as optical disk or CD-ROM (as is the case with Rule 17a-4, as noted above).²⁰⁹

The Commission is modifying the provision of the rule that required the original and duplicate units of the storage media to be serialized and time-dated to clarify that this must be done *if applicable* (*i.e.*, if the firm uses a storage media such as optical disk or CD-ROM).²¹⁰ The Commission also is modifying the provision of the rule that required the firm to have available facilities for immediate, easily readable projection or productions of electronic storage media *images* and for producing easily readable *images*; the final rule instead

²⁰⁷ This requirement was in paragraph (e)(2)(ii)(A) of Rule 18a-6, as proposed.

²⁰⁸ This requirement was in paragraph (e)(2)(i) of Rule 18a-6, as proposed.

²⁰⁹ See paragraph (e) of Rule 18a-6, as adopted. The Commission also is deleting the phrase “on any medium acceptable under § 240.18a-6” from paragraph (e)(3)(iii) of Rule 18a-6. In addition, the Commission is also replacing throughout paragraph (e) references to information placed “on” electric storage systems with references to information placed “in” such systems.

²¹⁰ See paragraph (e)(2)(ii) of Rule 18a-6, as adopted.

provides that the facilities can be for the projection or production of images or *records* that are maintained on the electronic storage system.²¹¹ This modification is designed to accommodate electronic storage systems that do not use optical disk or CD-ROM media. Further, the Commission is modifying the provision of the rule that required the firm to be ready at all times to immediately provide an *facsimile enlargement* which the staff of the Commission may request; the final rule requires instead that the firm must be ready at all times to immediately provide *in a readable format any record or index stored on the electronic storage system* which the staff of the Commission may request.²¹²

The elimination of the WORM requirement as the exclusive means of storing records electronically will provide flexibility to stand-alone and bank SBSBs and MSBSPs in terms of establishing and maintaining electronic storage systems and will eliminate a potential conflict with the requirements of the CFTC. However, eliminating the WORM requirement does not change the underlying requirements in Rules 18a-5 and 18a-6 that stand-alone and bank SBSBs and MSBSPs make and keep certain records, preserve those and other records for required time periods, and furnish promptly legible, true, complete, and current copies of records to a representative of the Commission. A firm's obligation to comply with these requirements is the same irrespective of whether it stores records in paper form or electronically and, therefore, a firm that elects to store records electronically should keep these obligations in mind in designing, implementing, and maintaining an electronic storage system.

The Commission also is modifying the final rule to eliminate the proposed provision that required at least one third party to have access to and the ability to download information from the electronic storage media and for that third party to execute an undertaking that the third party would provide the Commission with the information necessary download information from the electronic storage media.²¹³ This provision was designed to facilitate the Commission's access to electronically stored records. A commenter stated that this requirement

²¹¹ See paragraph (e)(3)(i) of Rule 18a-6, as adopted.

²¹² See paragraph (e)(3)(ii) of Rule 18a-6, as adopted.

²¹³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25313.

(along with the WORM requirement) was “outdated in light of the changed technological environment.”²¹⁴ The commenter further stated that it requires broker-dealers to provide third-party access to firm systems and client information, which “needlessly exposes firms to data leakage and cybersecurity threats.” As noted above, the Commission believes that any change to the broker-dealer electronic storage provisions should be addressed in a separate regulatory initiative where the Commission intends to consider electronic storage media issues in a broader context, including with respect to other market participants. Accordingly, for the purposes of Rule 18a-6, the Commission believes it is appropriate not to adopt the proposed requirement.

Finally, paragraph (e)(3)(v) of Rule 18a-6, as proposed, would require firms that use an electronic storage system to have an audit system providing for accountability regarding the inputting of records to the electronic storage system and inputting of any changes made to every original and duplicate record.²¹⁵ This provision was modeled on the audit system requirement prescribed in paragraph (f)(3)(v) of Rule 17a-4. A commenter stated that firms report substantial difficulty assessing whether they have complied with the audit system requirement of Rule 17a-4.²¹⁶

The Commission explained the audit system requirement when it adopted the electronic storage provisions of Rule 17a-4.²¹⁷ In particular, the Commission stated that the rule requires an audit system to be utilized only when records required to be maintained under Rule 17a-4 are being entered or when any additions to existing records are made.²¹⁸ Consequently, an audit record is not required when a record is accessed but cannot be altered by the reader.²¹⁹ The Commission further stated that, although it was not specifying the

²¹⁴ See FIA Letter.

²¹⁵ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25312.

²¹⁶ See FIA Letter.

²¹⁷ See *Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934*, Exchange Act Release No. 38245 (Feb. 5, 1997), 62 FR 6469 (Feb. 12, 1997).

²¹⁸ *Id.* at 6471.

²¹⁹ *Id.*

contents of each audit system, data automatically or otherwise stored (in the computer or in hard copy) regarding inputting of records and changes to existing records will be part of that system.²²⁰ The Commission envisioned that the identities of individuals actually inputting records and making particular changes, and the identity of documents changed and the identity of new documents created, are the kind of information that automatically would be collected pursuant to the audit system requirements.²²¹

In addition, as part of the 2003 guidance with respect to the WORM requirement, the Commission stated that the audit system would need to provide accountability regarding the length of time records are stored in a non-rewriteable and nonerasable manner.²²² The Commission further stated that this should include senior management level approval of how the system is configured to store records for their required retention periods in a non-rewriteable and nonerasable manner.²²³

The audit system requirements of Rule 18a-6 are modeled on the existing requirements of Rule 17a-4. Consequently, firms can rely on the Commission's description of the Rule 17a-4 requirements – as set forth above – for the purposes of Rule 18a-6.

For the foregoing reasons, the Commission is adopting the electronic storage requirements with the modifications discussed above.²²⁴

²²⁰ *Id.* At 6473.

²²¹ *Id.*

²²² *Electronic Storage of Broker-Dealer Records*, 68 FR 25283.

²²³ *Id.*

²²⁴ *See* paragraph (e) of Rule 18a-6, as adopted. The Commission is also making the following non-substantive changes to paragraph (e) of Rule 18a-6, as adopted: (1) inserting the word “an” before the phrase “electronic storage system,” replacing the phrase “as defined in this section” with the phrase “as defined in this paragraph (e),” and replacing the word “meet” with the word “meets” in the introductory paragraph; (2) replacing the phrase “any digital storage medium or system” with “any digital storage system” in paragraph (e)(1); (3) inserting the word “an” before the phrase “electronic storage system,” and deleting the phrase “comply with the following instructions” in paragraph (e)(2); (4) deleting the phrase “to any system acceptable under this paragraph (e) as required by the Commission,” and adding the phrase “into a readable format” between the words “download” and “indexes” in paragraph (e)(2)(iii); (5) deleting the proposed text of paragraphs (e)(2)(i), (e)(2)(ii) introductory text, and (e)(2)(ii)(A) and re-numbering proposed paragraphs (e)(2)(ii)(B) through (D) as paragraphs (e)(2)(i) through (iii), respectively; (6) inserting the word “an” before the phrase “electronic storage system” in paragraph (e)(3); (7) replacing the phrase “to provide, and immediately provide,” with the phrase “to immediately provide” in paragraph (e)(3)(ii); (8) deleting the comma after the word “original,” replacing the phrase “the record” with the phrase “a record,” and adding the phrase “the electronic storage system on” between the words “on” and “any” in paragraph (e)(3)(iii); (9) replacing the word “media” with the word “storage” in paragraph (e)(3)(iv); (10) deleting the phrase “The security-based swap dealer or major security-based swap participant must,” capitalizing the word “Have,” and adding the word “the” before the phrase “electronic

Prompt Production of Records

Paragraph (i) of Rule 17a-4 applies when a broker-dealer, including a broker-dealer SBSD or MSBSP, uses a third party to prepare or maintain the records required to be maintained and preserved pursuant to Rules 17a-3 and 17a-4. It requires the third party to file an undertaking with the Commission stating, among other things, that the records are the property of the broker-dealer and will be promptly furnished to the Commission or its designee. Paragraph (j) of Rule 17a-4 requires a broker-dealer, including a broker-dealer SBSD or MSBSP, to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the broker-dealer that are required to be preserved under Rule 17a-4, or any other records of the broker-dealer subject to examination under Section 17(b) of the Exchange Act that are requested by the representative of the Commission.²²⁵ The Commission proposed including parallel requirements in Rule 18a-6 for stand-alone and bank SBSDs and MSBSPs.²²⁶ The proposed requirement for these entities to promptly produce records referenced Section 15F of the Exchange Act (rather than Section 17(b)).²²⁷ The Commission received no comments on these proposed prompt production requirements and is adopting them as proposed.²²⁸

storage system” in paragraph (e)(3)(v); and (11) replacing the words “media” or “medium” with the word “system,” deleting the phrase “to any acceptable system under this section,” replacing the phrase “to any medium acceptable under §240.18a-6” with “to a readable format,” and replacing the phrase “upon being provided with the appropriate electronic storage” with the phrase “upon being provided with access to the appropriate electronic storage” in paragraph (e)(3)(vii).

²²⁵ Section 17(b) of the Exchange Act provides, among other things, that all records of a broker-dealer are subject at any time, or from time to time, to such reasonable, periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency of the broker-dealer as the Commission or the appropriate regulatory agency deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

²²⁶ *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25219-20.

²²⁷ Section 15F(f)(1)(C) of the Exchange Act provides that SBSDs and MSBSPs shall keep books and records described in sections 15F(f)(1)(B)(i) and (ii) open to inspection and examination by any representative of the Commission. In addition, Section 15F(j) imposes duties on SBSDs and MSBSPs with respect to monitoring of trading, risk management procedures, disclosing information to the Commission and the prudential regulators, obtaining information, conflicts of interest, and antitrust considerations. With respect to disclosing information, Section 15F(j)(3) provides that an SBSD and MSBSP shall disclose to the Commission and to the prudential regulator for the SBSD or MSBSP, as applicable, information concerning: (1) terms and conditions of its security-based swaps; (2) security-based swap trading operations, mechanisms, and practices; (3) financial integrity protections relating to security-based swaps; and (4) other information relevant to its trading in security-based swaps.

²²⁸ *See* paragraphs (f) and (g) of Rule 18a-6, as adopted.

b. Additional Amendments to Rule 17a-4 and Modifications to Rule 18a-6

The Commission proposed several amendments to Rule 17a-4 to eliminate obsolete text, improve readability, and modernize terminology.²²⁹ Reference is made throughout Rule 17a-4 to “members” of a national securities exchange as a distinct class of registrant in addition to broker-dealers. The Commission proposed to remove these references to “members” given that the rule applies to brokers-dealers, which would include members of a national securities exchange that are brokers-dealers. The rule being adopted in this document does not remove these references to “members” to avoid confusion as to whether their removal resulted in a substantive change to the rule.

The Commission proposed a second global change that would replace the phrase “Every broker and dealer” with “Every broker or dealer.”²³⁰ The Commission also proposed a global change to replace the use of the word “shall” in the rule with the word “must” or “will” where appropriate.²³¹ In paragraph (m) of Rule 17a-4, the Commission proposed to replace the words “shall have” with the word “has.”²³² The Commission also proposed certain stylistic, corrective, and punctuation amendments to improve the readability of Rule 17a-4.²³³

²²⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25220-21.

²³⁰ The amendments replace the phrase “Every broker and dealer” with the phrase “Every broker or dealer” in the following paragraphs of Rule 17a-4 as proposed to be amended: (a) through (e) and (j).

²³¹ The amendments replace the word “shall” with the word “must” or “will” in the following paragraphs of Rule 17a-4: (a), (b) introductory text, (b)(11), (c), (d), (e) introductory text, (e)(8), (f)(2) and (3), (g), (i), (j), (k)(1), and (l).

²³² The amendments replace the phrase “shall have” with the word “has” in the following paragraphs of Rule 17a-4: (m)(1) through (4).

²³³ The Commission is adopting the following stylistic and corrective changes to Rule 17a-4: (1) in paragraph (a), replacing the phrases “paragraph §” and “paragraph §” with the symbols “§§” and “§”, respectively; (2) adding the word “and” between phrase “money balance” and the word “position” in paragraph (b)(8)(i) for consistency with paragraph (b)(8)(ii); (3) replacing the phrase “§ 242.901 *et seq.* of this chapter” with the phrase “§§ 242.901 through 242.909 of this chapter” in paragraph (b)(14); (4) replacing the phrase “out of the money options” with the phrase “out-of-the-money options” in paragraph (b)(8)(ix); (5) replacing the phrase “paragraph (a)(12) of § 240.17a-3” with the phrase “§ 240.17a-3(a)(12)” in paragraph (e)(1); (6) replacing the phrase “paragraph (a)(13) of § 240.17a-3” with the phrase “§ 240.17a-3(a)(13)” in paragraph (e)(2); (7) replacing the phrase “paragraph (a)(15) of § 240.17a-3” with the phrase “§ 240.17a-3(a)(15)” in paragraph (e)(3); (8) replacing the phrase “for the life” with the phrase “during the life” in paragraph (e)(3); (9) replacing the phrase “paragraph (a)(14) of § 240.17a-13” with “§ 240.17a-13(a)(14)” in paragraph (e)(4); (10) replacing the phrase “this paragraph” with the phrase “this section” in paragraph (f); (11) replacing the phrase “each index” with the phrase “the index” in paragraph (f)(3)(iv)(B); (12) replacing the phrase “the self-regulatory organizations” with the phrase “any self-regulatory organization” in paragraph (f)(3)(vi); (13) replacing the phrase “Rule 17a-4” with the phrase “§ 240.17a-4” in paragraph (f)(3)(vii); and (14) in paragraph (g), replacing the phrase “section 15 of the Securities Exchange Act of 1934 as amended (48 Stat. 895, 49 Stat. 1377; 15 U.S.C. 78o)” with the phrase “section 15 of the Act (15 U.S.C. 78o).”

Further, as discussed above, the Commission is eliminating the requirements in current paragraphs (c) and (d) of Rule 17a-3 and, as a consequence, current paragraphs (e) through (h) have been redesignated as paragraphs (d) through (g), respectively. The Commission proposed to amend Rule 17a-4 to make corresponding changes to cross-references to these paragraphs of Rule 17a-3.

The Commission proposed amendments to paragraph (b)(8) of Rule 17a-4 that would replace the phrase “annual audited financial statements” with the phrase “the annual financial statements” to reflect the broader range of documents required by Rule 17a-5. Due to the addition of paragraphs (b)(8)(xiv) and (xvi) to Rule 17a-4, as discussed above, the Commission proposed to redesignate paragraphs (b)(8)(xiv) and (xv) as paragraphs (b)(8)(xv) and (xvii), respectively.

The Commission proposed amendments to paragraph (h) of Rule 17a-4 that would add, after the phrase “Rule G-9 of the Municipal Securities Rulemaking Board,” the phrase “or any successor rule” to address the possibility of a future change in how the MSRB’s rules are designated.

The Commission received no comments on these proposed amendments and is adopting them substantially as proposed, with the modification discussed above about retaining references to “members.”²³⁴ The Commission is also making certain non-substantive modifications to Rule 18a-6 as proposed in addition to those discussed above.²³⁵

²³⁴ See Rule 17a-4, as amended. In addition to the differences discussed above between Rule 17a-4, as proposed to be amended, and Rule 17a-4, as amended, the Commission is adopting the following non-substantive changes to Rule 17a-4: (1) removing the phrase “including a broker or dealer also registered as a security-based swap dealer or major security based swap participant under Section 15F(b) of the Act (15 U.S.C. 78x-8(b))” from the undesignated introductory paragraph for clarity; (2) removing “on the schedule” in paragraph (b)(8)(xiii) for clarity; (3) removing “or Form SBS” in paragraph (b)(8)(xiii) as it is no longer applicable; (4) adding “security-based swap” before the phrase “possession or control requirements” in paragraph (b)(8)(xiv) for clarity; (5) correcting references from § 240.18a-4 to § 240.15c3-3 in paragraph (b)(8)(xiv); (6) replacing “on Form SBS” with “in Part II of Form X-17A-5”; and (7) replacing “;” with “,” in paragraphs (b)(14) and (15) for internal consistency.

²³⁵ See Rule 18a-6, as adopted. In particular, the non-substantive modifications to Rule 18a-6 are: (1) replacing “record maintenance and preservation requirements” with “books and records requirements” in the undesignated introductory paragraph for internal consistency; (2) replacing “;” with “,” for each paragraph in Rule 18a-6 for internal consistency; (3) replacing “records required for corporation or partnerships), all Forms SBSE (§ 249.617 of this chapter), Forms SBSE-A, Forms SBSE-W (§ 249.617 of this chapter),” with “records required for corporations or partnerships), all Forms SBSE (§ 249.617 of this chapter), all Forms SBSE-A, all Forms SBSE-W (§ 249.617 of this chapter),” in paragraph (c) for consistency with paragraph (d) of Rule 17a-4, as amended; (4) pluralize “production” to “productions” in paragraph (e)(3)(i) for consistency with paragraph (f)(3)(i) of Rule 17a-4, as amended; (5) removing quotation marks around “the undersigned” in paragraph (e)(3)(vii) for consistency with paragraph (f)(3)(vii) of Rule 17a-4, as amended; (6) removing “under the Act”

B. Reporting

1. Introduction

The Commission in this document is establishing a reporting program for SBSs and MSBSs under Sections 15F and 17(a) of the Exchange Act that is modeled on the reporting program for broker-dealers in Rule 17a-5. Rule 17a-5 has two main elements: (1) a requirement that broker-dealers file periodic unaudited reports about their financial and operational condition using the FOCUS Report form; and (2) a requirement that broker-dealers annually file financial statements and certain reports, as well as reports covering those statements and reports prepared by an independent public accountant registered with the Public Company Accounting Oversight Board (“PCAOB”) in accordance with PCAOB standards. The Commission proposed to amend Rule 17a-5 to account for the security-based swap activities of stand-alone broker-dealers and to establish a reporting regime for broker-dealer SBSs and MSBSs.²³⁶ The Commission further proposed new Rule 18a-7 (which was modeled on Rule 17a-5) to establish a reporting regime for stand-alone and bank SBSs and MSBSs. The Commission is adopting the proposed amendments to Rule 17a-5 and new Rule 18a-7 with modifications, as discussed below.

A commenter requested clarification as to whether an OTC derivatives dealer dually registered as an SBS or MSBS would be subject to Rule 17a-5 or instead to new Rule 18a-7.²³⁷ The applicability of Rule 17a-5 or 18a-7 will depend on whether the firm is subject to the capital requirements of Rule 15c3-1 (in which case Rule 17a-5 will apply), is subject to the capital requirements of Rules 18a-1 or 18a-2 (in which case Rule 18a-7 will apply), or has a prudential regulator (in which case Rule 18a-7 will apply).²³⁸ Therefore, a stand-

from paragraph (e)(3)(vii) for consistency with paragraph (f)(3)(vii) of Rule 17a-4, as amended; (7) adding “by the registrant” after the phrase “arrangements for the downloading of any record required to be maintained and preserved” in paragraph (e)(3)(vii) for consistency with paragraph (f)(3)(vii) of Rule 17a-4, as amended; (8) replacing “which are requested by a representative of the Commission” with “that are requested by a representative of the Commission” in paragraph (g) for consistency with paragraph (j) of Rule 17a-4, as amended.

²³⁶ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25221-47.

²³⁷ See Letter from Angie Karna, Managing Director, Nomura Global Financial Products Inc. (Sept. 10, 2014) (“Nomura Letter”).

²³⁸ The undesignated introductory paragraphs to Rules 17a-5 and 18a-7 have been modified to clarify this application of the rules.

alone broker-dealer, including a stand-alone OTC derivatives dealer, (which is subject to Rule 15c3-1) will continue to be subject to Rule 17a-5.²³⁹ Similarly, a broker-dealer, other than an OTC derivatives dealer, that is also an SBSBSP (which is subject to Rule 15c3-1) will be subject to Rule 17a-5. A broker-dealer, including an OTC derivatives dealer, that is also an MSBSP (which is subject to Rule 15c3-1) will be subject to Rule 17a-5. A stand-alone SBSBSP (which is subject to Rule 18a-1) will be subject to Rule 18a-7. Similarly, an SBSBSP that is also an OTC derivatives dealer (“OTCDD/SBSBSP”) (which is subject to Rule 18a-1) will be subject to Rule 18a-7.²⁴⁰ A stand-alone MSBSP (which is subject to Rule 18a-2) will be subject to Rule 18a-7. Finally, a bank SBSBSP or MSBSP (which has a prudential regulator) will be subject to Rule 18a-7.

The Commission is also adopting amendments to the FOCUS Report. The Commission proposed to create a new part of the FOCUS Report – Form SBS – to be filed by all types of SBSBSPs and MSBSPs, while stand-alone broker-dealers would continue filing FOCUS Report Parts II, IIA, IIB, or II CSE, as applicable.²⁴¹ After further consideration of the issue, the Commission believes the best approach is to consolidate Form SBS and FOCUS Report Parts II, IIB, and II CSE into a single form: the FOCUS Report Part II. In addition, the Commission believes it is appropriate to adopt a new form – the FOCUS Report Part IIC – to be filed by bank SBSBSPs and MSBSPs rather than Form SBS as was proposed. The decision to require bank SBSBSPs and MSBSPs to file a separate form is based on the more limited information that they will need to provide on the form (as compared to FOCUS Report Part II filers). Consequently, broker-dealers that file the FOCUS Report Part II will continue to do so. ANC broker-dealers and OTC derivatives dealers also will file the FOCUS Report Part II, as will broker-dealer and stand-alone SBSBSPs and MSBSPs. Bank SBSBSPs and MSBSPs will file

²³⁹ Paragraph (p) of Rule 17a-5 provides that an OTC derivatives dealer may comply with Rule 17a-5 by complying with the provisions of Rule 17a-12.

²⁴⁰ As discussed in this release, an OTC derivatives dealer dually registered as an SBSBSP is subject to Rules 17a-3, 17a-4, 17a-13, 18a-1, 18a-4, 18a-7, and 18a-8 rather than Rules 18a-5, 18a-6, 18a-9, 15c3-1, 15c3-3, 17a-5, and 17a-11, respectively. As a result, the Commission has made conforming modifications to Rule 18a-7. In particular, where Rule 18a-7 refers to Rule 18a-9, the Commission has added the following reference to Rule 17a-13: “or 240.17a-13, as applicable.”

²⁴¹ The Commission requested comment on whether all broker-dealers, SBSBSPs, and MSBSPs should file the same consolidated form. See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25235–25236. The Commission received no comments specifically addressing this issue.

the FOCUS Report Part IIC.

A commenter urged the Commission not to impose “position reporting requirements,” arguing that they are unnecessary in light of the “transaction reporting requirements” of Regulation SBSR.²⁴² The Commission disagrees. The reporting requirements are designed to promote transparency of the financial and operational condition of a broker-dealer, SBSB, or MSBSP to the Commission and, in the case of a portion of the annual reports, to the public.²⁴³ This information will assist the Commission staff in monitoring these firms and examining them for compliance with the securities laws. Position records are of a different nature, and serve a different purpose, than the transaction data that will be reported pursuant to Regulation SBSR. Specifically, position records provide an overview of a firm’s holdings at a specific point in time. The commenter states that position reporting requirements are unnecessary “for purposes of market surveillance.”²⁴⁴ However, as discussed above, the recordkeeping requirements being adopted in this document are designed to elicit information about the financial and operation condition of the filer. Market surveillance is not the objective of the requirements. Finally, the commenter stated that if the Commission does adopt position reporting requirements, it “should limit the scope of such requirements for non-U.S. SBSBs to transactions that are either (i) cleared on a U.S.-registered clearing agency or derivatives clearing organization or (ii) opposite a U.S. person counterparty.”²⁴⁵ As discussed above, the purpose of the reporting requirements is to obtain information about the financial and operational condition of the filer. Limiting the requirements to a subset of the filer’s positions would not provide a complete picture of the filer’s financial and operational condition. Moreover, the Commission has proposed in a separate release additional provisions that are designed to address concerns about the cross-border application of certain requirements applicable to SBSBs and MSBSPs.²⁴⁶

²⁴² See Memorandum from the Division of Trading and Markets regarding a March 25, 2019 meeting with representatives of the Institute of International Bankers (“IIB 3/25/2019 Meeting”).

²⁴³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25221.

²⁴⁴ See IIB 3/25/2019 Meeting.

²⁴⁵ See *id.*

²⁴⁶ See *Cross-Border Application Proposing Release*, 84 FR 24206.

2. Periodic Filing of FOCUS Report

a. Rule 17a-5 and Rule 18a-7

Undesignated Introductory Paragraph

The Commission proposed amending Rule 17a-5 to add an undesignated introductory paragraph stating that: (1) the rule applies to a broker-dealer, including a broker-dealer SBSB or MSBSP; and (2) a stand-alone or bank SBSB or MSBSP is subject to the reporting requirements under proposed Rule 18a-7.²⁴⁷ The Commission also proposed amending Rule 17a-5 to remove paragraph (a)(1), which provides that paragraph (a) shall apply to every broker-dealer registered pursuant to Section 15 of the Exchange Act, because this text was redundant of the undesignated introductory paragraph of Rule 17a-5, as proposed to be added. Similarly, the Commission proposed that Rule 18a-7 have an undesignated introductory paragraph explaining that the rule applies to an SBSB or MSBSP that is not dually registered as a broker-dealer (*i.e.*, a stand-alone or bank SBSB or MSBSP). The Commission received no comments on the introductory paragraphs but, as discussed above, is modifying them to clarify which rule (17a-5 or 18a-7) applies to a given type of entity.²⁴⁸ The Commission received no comments on the proposed amendment to remove paragraph (a)(1) from Rule 17a-5 and is adopting it as proposed.²⁴⁹

Requirement to File the FOCUS Report

Rule 17a-5 requires a broker-dealer, other than an OTC derivatives dealer, to file FOCUS Report Part II or IIA.²⁵⁰ The Commission proposed amending the rule to require a broker-dealer SBSB or MSBSP to file

²⁴⁷ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25222.

²⁴⁸ See undesignated introductory paragraph of Rule 17a-5, as amended; undesignated introductory paragraph of Rule 18a-7, as adopted.

²⁴⁹ See Rule 17a-5, as amended. As a consequence of the removal of paragraph (a)(1) of Rule 17a-5, paragraphs (a)(2)(i) through (iv) are redesignated paragraphs (a)(1)(i) through (iv), respectively. Further, as a consequence of the removal of paragraph (a)(1), paragraphs (a)(3) through (7) of Rule 17a-5 are redesignated paragraphs (a)(2) through (6), respectively.

²⁵⁰ Prior to these amendments, the requirement that an OTC derivatives dealer file FOCUS Report Part IIB was set forth in paragraph (a) of Rule 17a-12. While an ANC broker-dealer is required under paragraph (a) of Rule 17a-5 to file FOCUS Report Part II, FINRA Rule 4521(b) provides that ANC broker-dealers must file supplemental and alternative reports as may be prescribed by FINRA. Under this rule, FINRA requires ANC broker-dealers to file FOCUS Report Part II CSE in lieu of FOCUS Report Part IIA. See also *Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change to Require Members That Use Appendix E to Calculate Net Capital to File Supplemental and*

proposed Form SBS rather than the FOCUS Report Part II or IIA.²⁵¹ The Commission also proposed including parallel requirements in Rule 18a-7 that: (1) stand-alone SBSDs and MSBSPs be required to file proposed Form SBS with the Commission or its designee within seventeen business days after the end of each month; and (2) bank SBSDs and MSBSPs be required to file Form SBS with the Commission or its designee within seventeen business days after the end of each calendar quarter (instead of each month).²⁵² The Commission proposed quarterly financial reporting for bank SBSDs and MSBSPs, instead of monthly reporting, because the prudential regulators currently require banks to file reports of financial and operational condition known as “call reports” on a quarterly basis.²⁵³ Under the proposal, the information reported by bank SBSDs and MSBSPs on the FOCUS Report Part IIC largely would be information that banks are required to provide in the call reports.

In response to the Commission’s proposal to require bank SBSDs and MSBSPs to file Form SBS seventeen business days after the end of the quarter, a commenter requested that it change the deadline to match the prudential regulators’ requirement to file call reports thirty calendar days after the end of the quarter.²⁵⁴ To respond to the commenter’s concerns, as well as to promote harmonization with prudential regulators’ requirements, the Commission is adopting a thirty calendar-day requirement as requested by the commenter. Since the proposed seventeen business-day requirement would have corresponded with twenty-four calendar days (with a conservative assumption of no public holidays), this will provide administrative relief to bank SBSDs and MSBSPs by allowing them six additional calendar days to file the FOCUS Report Part IIC with the Commission.

Alternative Reports, 70 FR 49349 (Commission approval of amendments to NYSE Rule 418 requiring ANC broker-dealers to file Part II CSE).

²⁵¹ *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25222-24.

²⁵² In each case, the stand-alone or bank SBSD or MSBSP needed to file Form SBS with the Commission or its *designee*. The reference to a Commission *designee* was designed to provide the Commission with the option of requiring that these registrants file the FOCUS Report with a third party. Most broker-dealers file the FOCUS Report directly with their SROs pursuant to plans established by the SROs under paragraph (a)(3) (formerly paragraph (a)(4)) of Rule 17a-5, as amended. *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25223.

²⁵³ *See Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices—FFIEC 031* (“FFIEC Form 031” or “call report”). *See also* 12 U.S.C. 161; 12 U.S.C. 324; 12 U.S.C. 1464; 12 U.S.C. 1817.

²⁵⁴ *See* SIFMA 9/5/2014 Letter.

The Commission also proposed amendments to Rule 17a-5 to make explicit the requirement that the FOCUS Report filed by a stand-alone broker-dealer or the Form SBS filed by a broker-dealer SBSB or MSBSP must be “executed.”²⁵⁵ The Commission proposed parallel requirements in Rule 18a-7 to require that a Form SBS filed by a stand-alone or bank SBSB or MSBSP must be executed. The Commission received no comment on these proposals for executed forms. For the reasons discussed above, the Commission is adopting the FOCUS Report filing requirements substantially as proposed.²⁵⁶

Additional Reporting Requirements for Registrants that use Models

Rule 17a-5 requires ANC broker-dealers to file additional reports on a monthly or quarterly basis with the FOCUS Report.²⁵⁷ The Commission proposed similar reporting requirements in Rule 18a-7 for stand-alone SBSBs approved to use internal models to compute net capital.²⁵⁸ These entities would be required to file most of the required documents within 17 business days after the end of each month. However, to correspond with the timing requirement in the proposed capital rule for these entities (Rule 18a-1),²⁵⁹ they would be required to file the following reports within seventeen business days after the end of each calendar quarter (instead of each month): a report identifying the number of business days for which the actual daily net trading loss exceeded the corresponding daily value at risk (“VaR”); and the results of backtesting of all internal models used to compute allowable capital, indicating the number of backtesting exceptions. The Commission received no comment on these additional reporting proposals for stand-alone SBSBs and has adopted Rule 18a-1.²⁶⁰ Consequently, the

²⁵⁵ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25224. Prior to these amendments, the FOCUS Report Parts II, IIA, IIB, and II CSE each had a section for the filer to execute the form.

²⁵⁶ See paragraph (a) of Rule 17a-5, as amended; paragraphs (a)(1) and (2) of Rule 18a-7, as adopted. References in these paragraphs to Form SBS are changed to references to the FOCUS Report Part II and the FOCUS Report Part IIC, respectively. Similarly, references to Form SBS were also included in paragraphs (a)(1), (3), and (4), (b)(1), (d)(2)(i) and (iii), and (e)(3) of Rule 17a-5, as proposed to be amended. The references to proposed Form SBS are not being adopted and these provisions will continue to refer solely to the FOCUS Report. As discussed above, the requirement that an OTCDD/SBSB file the FOCUS Report Part II is prescribed in Rule 18a-7 (rather than 17a-5, as proposed).

²⁵⁷ See paragraph (a)(5) of Rule 17a-5, as amended.

²⁵⁸ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25224.

²⁵⁹ See *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70237-40.

²⁶⁰ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 44052.

Commission is adopting the additional reporting requirements, but with the modification that an OTCDD/SBSD must file them pursuant to Rule 18a-7 (rather than Rule 17a-5).²⁶¹

b. FOCUS Report

As discussed above, the Commission proposed Form SBS as the reporting form for all categories of SBSDs and MSBSPs. Proposed Form SBS was modeled on the FOCUS Report, particularly FOCUS Report Part II CSE. FOCUS Report Part II CSE served as the template for proposed Form SBS because it was designed to account for the use of internal models to compute net capital by ANC broker-dealers and elicits more detailed information about derivatives positions and exposures than FOCUS Report Parts II and IIA.²⁶² Based on staff experience, including experience monitoring ANC broker-dealers, the Commission anticipates that most SBSDs will use internal models to compute their net capital.²⁶³

However, as discussed above, the Commission is not adopting Form SBS as proposed, but is instead requiring the FOCUS Report Part II to be filed by nonbank SBSDs and MSBSPs. Further, the Commission is requiring that bank SBSDs and MSBSPs file FOCUS Report Part IIC (rather than proposed Form SBS or the FOCUS Report Part II, as amended). The information that must be provided by SBSDs and MSBSPs is substantively the same information elicited by proposed Form SBS, except that the information is now being elicited in FOCUS Report Parts II and IIC. Accordingly, the Commission is adopting changes to FOCUS Report Part II and the corresponding instructions to update the form, reflect the required filers, and account for these firms' derivatives activity.

Thus, ANC broker-dealers that filed Part II CSE prior to these amendments and OTC derivatives dealers

²⁶¹ See paragraphs (a)(3)(i) through (ix) of Rule 18a-7, as adopted. As proposed, paragraph (a)(3)(vii) of Rule 18a-7 would have required a stand-alone SBSB authorized to use internal models to calculate net capital to report the results of a monthly liquidity stress test. As discussed above, the Commission is deferring consideration of the liquidity stress test requirements for these entities and, therefore, this paragraph is being designated as “[Reserved].”

²⁶² FOCUS Report Part IIB elicits similar information about derivatives positions and exposures but otherwise is more limited than FOCUS Report Part II CSE because OTC derivatives dealers are permitted to engage only in a narrow range of activities. See 17 CFR 240.3b-12; 17 CFR 240.15a-1. See also *Recordkeeping and Reporting Proposing Release*, 79 FR at 25224, n. 440.

²⁶³ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43959-60.

that filed Part IIB prior to these amendments instead will be required to file FOCUS Report Part II, as amended – FOCUS Report Parts II CSE and IIB will be discontinued. From the perspective of these entities, the information they will be required to enter into the revised FOCUS Report Part II as compared to FOCUS Report Parts II CSE and IIB is substantively the same. Similarly, from the perspective of broker-dealers that were required to file FOCUS Report Part II prior to these amendments, the information they will be required to enter into the revised form is substantively the same.²⁶⁴ Importantly, there is already significant overlap among the four forms filed on the eFOCUS system of the Financial Industry Regulatory Authority (“FINRA”): the FOCUS Report Parts II, IIA, IIB, and II CSE.²⁶⁵ Much of this duplication and overlap between forms is eliminated by combining the forms into a single revised FOCUS Report Part II and modifying the form to include the line items that were in proposed Form SBS.

The Commission believes that broker-dealers registering as an SBS or MSBS will find the consolidation preferable, since rather than familiarizing themselves with a new form (Form SBS), such dual registrants can continue to file FOCUS Report Part II, as amended. The consolidation is also expected to

²⁶⁴ In addition to the differences between Form SBS, as proposed to be adopted, and FOCUS Report Part II, as amended, as discussed below, broker-dealers will note the following general changes: (1) there are new sections added to the form that these firms may not be required to complete (e.g., Computation of Tangible Net Worth, which is required to be completed by stand-alone MSBSs); (2) certain lines are worded differently or assigned different line item numbers (e.g., Pre-Amendment FOCUS Report Part II’s “Money differences” (line item numbers 5000, 5010, 5020, and 5030) is relabeled “Money suspense and balancing difference” (line item numbers 5610, 5610, 6010, and 6012) in FOCUS Report Part II, as amended); (3) to the extent these entities engage in security-based swap or swap activities but are not SBSs or MSBSs, they will now have specific line items tailored to these products in which to input information; and (4) broker-dealers registered as FCMs are required to complete certain new sections the CFTC added to the CFTC’s Form 1-FR-FCM in 2013. *See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations*, 78 FR 68506, 68513 (Nov. 14, 2013); 17 CFR 1.10(h) (allowing broker-dealers to file the FOCUS Report instead of Form 1-FR-FCM so long as all information required to be furnished on and submitted with Form 1-FR-FCM is provided with the FOCUS Report)).

²⁶⁵ For example, all of the forms contain a cover page and contain (with variations): a statement of financial condition, a computation of net capital, a computation of the net capital requirement, a statement of income (loss), a statement of changes in ownership equity, a statement of changes in subordinated liabilities, and a statement of ownership equity and subordinated liabilities maturing or proposing to be withdrawn within the next six months. In addition, all of the forms except FOCUS Report Part IIA elicit financial and operational data; both FOCUS Report Parts II and II CSE contain (with variations): a computation for determination of reserve requirements under Rule 15c3-3, information for possession or control requirements under Rule 15c3-3, and a schedule of segregation requirements; and both FOCUS Report Parts IIB and II CSE contain (with variations): a schedule of aggregate securities and OTC derivatives positions, a schedule of geographic distribution of OTC derivatives exposures, a credit concentration report, and a portfolio summary of OTC derivatives exposures by internal credit rating.

enhance the Commission’s supervisory capacities, since it will be easier to compare different types of registrants’ FOCUS Report responses when they are filing the same form.

Bank SBSBs and MSBSBs will file FOCUS Report Part IIC, which elicits more limited information than FOCUS Report Part II. Moreover, much of the information elicited is already reported by these entities on their call reports. The Commission believes that bank SBSBs and MSBSBs will find it simpler to utilize the shorter FOCUS Report Part IIC, which is tailored to these entities and focuses on their business as an SBSB or MSBSB. Indeed, bank SBSBs and MSBSBs would have shared only one section in common with other Form SBS filers (the cover page), so the vast majority of Form SBS would not have been applicable to these bank entities.²⁶⁶ In addition, the capital and margin requirements applicable to nonbank SBSBs and MSBSBs – which are the source of the information input into the revised FOCUS Report Part II – do not apply to bank SBSBs and MSBSBs. Bank SBSBs and MSBSBs are instructed to follow FFIEC Form 031’s instructions regarding a majority of the line items on FOCUS Report Part IIC, as adopted, since most of the sections require these entities to report general financial information that banks are already required to report on FFIEC Form 031.

FOCUS Report Part II, as amended, continues to elicit financial and operational information about a filer through sections consisting of uniquely numbered line items.²⁶⁷ To the extent a line item number has already been assigned in FOCUS Report Parts II, IIA, IIB, and/or II CSE, revised FOCUS Report Part II uses the same line item number. However, the amended form also includes new lines and corresponding line items that were proposed in Form SBS and are relevant to security-based swap and swap activities. These line items

²⁶⁶ The reporting requirements in Rule 18a-7 and the sections of the FOCUS Report applicable to bank SBSBs and MSBSBs are more limited in scope because bank SBSBs and MSBSBs are subject to the prudential regulators’ reporting requirements. Further, the prudential regulators – rather than the Commission – are responsible for capital, margin, and other prudential requirements applicable to bank SBSBs and MSBSBs. For these reasons, the reporting requirements for bank SBSBs and MSBSBs are tailored to their activities as an SBSB or an MSBSB (as opposed to their activities as banks).

²⁶⁷ As used in this release, the term “line” refers to the lines in the left column on the FOCUS Report that describe the type of entries to be made on that line. The term “line item” refers to the fields into which information is entered. For example, Line 1 of the Statement of Income (Loss) section on revised FOCUS Report Part II is cash, Line Item 200 is the field to enter the allowable amount of cash, and Line Item 750 is the field to enter the total amount of cash.

are identified by numbers on revised FOCUS Report Part II with a 5-digit number beginning with 12000 and generally increasing upward.

Proposed Form SBS would have been divided into five parts.²⁶⁸ FOCUS Report Part II, as amended, and FOCUS Report Part IIC, as adopted, are not divided into parts. Dividing the form into parts was a more useful approach when bank entities would have been required to file the same form as nonbank entities. However, now that bank SBSDs and MSBSPs will separately file FOCUS Report Part IIC, there is no longer a need to subdivide the form into parts based on the type of registrant (*e.g.*, bank SBSD versus broker-dealer SBSD). In addition, separate parts are not necessary because the header at the top of each page of FOCUS Report Parts II and IIC identifies the type of registrants required to complete that page (as proposed in Form SBS). Nonetheless, the sections of revised FOCUS Report Part II appear in the same order as they appeared in proposed Form SBS, so they still follow the logic used to order the sections in the proposed form.

The Commission is amending the instructions for FOCUS Report Part II and adopting instructions for FOCUS Report Part IIC to provide further guidance on the information to be entered into certain line items.²⁶⁹

i. Revised FOCUS Report Part II

Cover Page

The FOCUS Report Parts II, IIA, IIB, and II CSE prior to these amendments (collectively and individually, the “Pre-Amendment FOCUS Reports”) include a cover page that elicits basic information about the reporting firm. Proposed Form SBS included a cover page largely in the same format as the cover page in Pre-Amendment FOCUS Report Part II, but with modifications to account for the additional registrants required to file the form.²⁷⁰ The Commission is adopting the cover page in proposed Form SBS by retaining the existing cover page in FOCUS Report Part II, as amended, with non-substantive changes largely to account for the

²⁶⁸ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25224-36.

²⁶⁹ See FOCUS Report Part II instructions, as amended; FOCUS Report Part IIC instructions, as adopted. The amendments to the instructions include incorporating relevant instructions from proposed Form SBS into the instructions for FOCUS Report Parts II and IIC, as well as globally replacing “non-bank” with “nonbank” for internal consistency.

²⁷⁰ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25225.

additional registrants required to use this form (stand-alone broker-dealers, ANC broker-dealers, OTC derivatives dealers, and broker-dealer and stand-alone SBSs and MSBSPs) and in response to comment.²⁷¹

Statement of Financial Condition

The Pre-Amendment FOCUS Reports have a Statement of Financial Condition section that elicits detail about filers' assets, liabilities, and ownership equity. Proposed Form SBS similarly had a Statement of Financial Condition section largely modeled on the parallel section in Pre-Amendment FOCUS Report Part II CSE.²⁷² The Commission received a number of comments on this proposed section and has modified it in response to these comments.

First, a commenter suggested that Lines 8 through 10 on the assets side of the Statement of Financial Condition section (which elicited details about securities, including security-based swaps, commodities, and swaps positions) should be simplified and consolidated into a single line item.²⁷³ As discussed below, the revised FOCUS Report Part II elicits details about these positions in other sections of the form. Accordingly, the Commission is consolidating these lines into Line 9 (Total net securities, commodities, and swaps positions) and making a corresponding modification in Line 24 of the liability side of the section (Total net securities, commodities, and swaps positions).²⁷⁴

Second, the Statement of Financial Condition section of proposed Form SBS required filers to report the amount of certain assets and liabilities that were includable in the broker-dealer customer reserve formula, the

²⁷¹ See FOCUS Report Part II, as amended, *Cover Page*. The following changes are being made: (1) the line soliciting firms to check the type of registrant filing the form is updated to reflect that bank SBSs and MSBSPs will not be required to file this part of the FOCUS Report Part II; (2) in response to commenters' requests to more explicitly address OTC derivatives dealers, the option is added to check a box if the respondent is an OTC derivatives dealer (*see, e.g.*, Nomura Letter); (3) in response to comment that Form SBS, as proposed to be adopted, did not reference foreign SBSs or foreign MSBSPs, a line is added asking firms if the filer is a U.S. person (*see* SIFMA 9/5/2014 Letter); (4) a line is added asking whether the filer is authorized to use models to compute capital as a way to check that the firm is completing the correct net capital section in the form; (5) a typographical error is corrected so that the officer's title under the signature line matches the officer's title under the line for the signing officer to print his or her name; and (6) the date field is made more flexible by specifying "2 ___" instead of "20 ___."

²⁷² See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25226-27.

²⁷³ See, e.g., SIFMA 9/5/2014 Letter.

²⁷⁴ See FOCUS Report Part II, as amended, *Statement of Financial Condition*, Lines 8 and 22.

proposed SBSB reserve formula, and a catch-all “other” section in which information about assets and liabilities related to segregation requirements under the CEA would be entered if the filer is also registered with the CFTC.²⁷⁵ Given that Commission and CEA segregation requirements are the most widely applicable segregation requirements for FOCUS Report filers, the Commission is consolidating the reporting of these amounts into single lines to the extent applicable.²⁷⁶

Third, the Statement of Financial Condition section of proposed Form SBS required filers to report information about payables due to securities customers and non-customers, security-based swap customers and non-customers, and swap customers and non-customers.²⁷⁷ A commenter suggested simplifying the form by deleting payables to security-based swap and swap customers and non-customers from the Statement of Financial Condition and capturing this information in the schedule that elicits detail on derivatives positions.²⁷⁸ The Commission agrees and has deleted these line items from this section and, instead, requires the information to be reported in Schedule 1 to FOCUS Report Part II, as amended.²⁷⁹ Similarly, the commenter noted the imbalance of requiring the reporting of other derivatives payables on the liabilities side of the balance sheet, but not requiring the reporting of other derivatives receivable on the assets side of the balance sheet.²⁸⁰ The Commission agrees and filers no longer must report other derivatives payable on the Statement of Financial Condition section and instead will report this information on Schedule 1 to FOCUS Report Part II, as amended.²⁸¹

Fourth, the Statement of Financial Condition section of proposed Form SBS directed filers to report

²⁷⁵ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25227.

²⁷⁶ See FOCUS Report Part II, as amended, *Statement of Financial Condition*, Lines 3A1, 3B1, 3C1, 3D1 (receivables), 17A (bank loans payable), 19A1, 19B1, 19C1, 19D1, and 19E1 (payables). Further, the Commission has adopted the SBSB segregation requirements that will generate amounts includable in these line items. See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43930-43.

²⁷⁷ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25227.

²⁷⁸ See SIFMA 9/5/2014 Letter.

²⁷⁹ See FOCUS Report Part II, as amended, *Statement of Financial Condition*, Schedule 1 – *Aggregate Securities, Commodities, and Swaps Positions*.

²⁸⁰ See, e.g., SIFMA 9/5/2014 Letter.

²⁸¹ See FOCUS Report Part II, as amended, *Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions*.

ownership equity from sole proprietorships, partnerships, corporations, and limited partners. The Commission is adding a reference to “members” in Line 29 of the Statement of Financial Condition in FOCUS Report Part II, as amended, instead of solely referencing “limited partners.” This change recognizes the legal structure of limited liability companies as well.

Fifth, lines are being added to the assets and liabilities sides of the Statement of Financial Condition for filers to report excess cash collateral pledged on derivative transactions (Lines 6 and 21 on FOCUS Report Part II, as amended). On the assets side, a broker-dealer or SBSB will report cash collateral posted to a counterparty that exceeds the amount of variation margin the firm has posted to cover current exposure. On the liability side, the broker-dealer or SBSB will report cash collateral posted from a counterparty that is in excess of the amount of variation margin the counterparty is required to post to cover current exposure. The addition of these lines requires firms to report the specific amounts on the asset side that are allowable and non-allowable assets. Establishing unique lines to report this information will avoid firms reporting the amounts in other lines that are not specifically tailored to present the information, which – based on staff experience – has resulted in firms reporting the information on several different lines. For the foregoing reasons, the Statement of Financial Condition section in proposed Form SBS is being adopted by retaining the parallel section in FOCUS Report Part II, as amended, with the modifications discussed above and certain other modifications.²⁸² This section is required to be completed by stand-alone broker-dealers and broker-dealer and stand-alone SBSBs and MSBSPs.

Computation of Net Capital

The Pre-Amendment FOCUS Reports have a Computation of Net Capital section. Proposed Form SBS included two sections: one to be completed by SBSBs authorized to use internal models to compute net capital

²⁸² See FOCUS Report Part II, as amended, *Statement of Financial Condition*. The following non-substantive changes are being made: (1) a line item is added for firms to report non-allowable cash (e.g., petty or restricted cash); (2) the note on the second page of the Statement of Financial Condition clarifies that “Stand-alone MSBSPs should only complete the Allowable and Total columns” (emphasis added); this sentence is also added to the instructions for the *Statement of Financial Condition*; (3) an obsolete accounting reference is updated globally (including on Line 15E, which was proposed as Line 14E) to accurately reflect “ASC 860” instead of “SFAS 140”; and (4) the instructions are updated to reflect the changes discussed in this section.

under the proposed capital requirements and the other to be completed by filers not authorized to use internal models for this purpose.²⁸³ The Commission has adopted capital requirements for nonbank SBSs under which certain firms may be authorized to use internal models to compute net capital.²⁸⁴

The Computation of Net Capital section for filers authorized to use models was largely modeled on the parallel section in Pre-Amendment FOCUS Report Part II CSE. The section in proposed Form SBS had a line for filers to report their contractual securities commitments because this line appeared on the Computation of Net Capital section in Pre-Amendment FOCUS Report Part II.²⁸⁵ However, this line item does not apply to filers authorized to use models and is removing it from the section.²⁸⁶

In addition, a commenter requested that the Computation of Net Capital section for filers authorized to use internal models account for firms approved to use the Basel 2.5 framework to compute market risk deductions.²⁸⁷ The Commission agrees and has added new Line 10 that elicits detail about market risk deductions computed under the Basel 2.5 framework.²⁸⁸ This will provide the Commission and other relevant securities regulators with greater detail about the components of the firms' calculations.

For the foregoing reasons, the Computation of Net Capital section for filers authorized to use models in Form SBS is being adopted by adding that section to FOCUS Report Part II, as amended, with the modifications discussed above and certain other modifications.²⁸⁹ This section is required to be completed by stand-alone

²⁸³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25227-28.

²⁸⁴ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43898-905.

²⁸⁵ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25228.

²⁸⁶ The FOCUS Report instructions clarify that contractual securities commitments not accounted for in the firm's VaR model will continue to be accounted for in residual marketable securities (Line Item 3665). See FOCUS Report Part II instructions, as amended.

²⁸⁷ See Email from Mary Kay Scucci, Managing Director, Securities Industry and Financial Markets Association (May 10, 2018) ("SIFMA 5/10/2018 Email").

²⁸⁸ See FOCUS Report Part II, as amended, *Computation of Net Capital (Filer Authorized to Use Models)*, Line 10. For firms not using the Basel 2.5 framework, the calculations are consolidated into Line 9 and the subsequent lines are renumbered accordingly.

²⁸⁹ See FOCUS Report Part II, as amended, *Computation of Net Capital (Filer Authorized to Use Models)*. The following change is being made: Line 11 now refers to "certain counterparties" instead of "commercial end user counterparties" for consistency with Rules 15c3-1 and 18a-1, as adopted. See paragraph (a)(7) of Rule 15c3-1; paragraph (a)(2) Rule 18a-1, as adopted.

broker-dealers and broker-dealer and stand-alone SBSs and MSBSPs authorized to use internal models to compute net capital.

The Computation of Net Capital section in proposed Form SBS for filers not authorized to use models was largely the same as the parallel section in Pre-Amendment FOCUS Report Part II. The Commission received no comment on this section. However, the Commission is adding new Line 9.C.8., titled “Risk-based haircuts computed under 17 CFR 240.15c3-1a or 17 CFR 240.18a-1a” and updating the instructions to FOCUS Report Part II accordingly. This change is intended to provide a specific line to report this information. The staff has observed that because the form currently does not have a unique line to enter the information, firms enter the information on several different lines. The Commission is also adopting non-substantive modifications to promote clarity.²⁹⁰ This section is required to be completed by stand-alone broker-dealers and broker-dealer and stand-alone SBSs and MSBSPs not authorized to use internal models to compute net capital.

Computation of Minimum Regulatory Capital Requirements

The Pre-Amendment FOCUS Reports have a Computation of Minimum Regulatory Capital Requirements section in which a broker-dealer inputs the calculation of its minimum net capital requirement. Proposed Form SBS included two such sections: one to be completed by broker-dealer SBSs and MSBSPs and the other to be completed by stand-alone SBSs.²⁹¹ Proposed Form SBS included these separate sections because the proposed minimum net capital computation applicable to a broker-dealer SBS differs from the computation applicable to a stand-alone SBS. The section for broker-dealer SBSs was largely modeled on the parallel section in Pre-Amendment FOCUS Report Part II used by broker-dealers. The section for stand-alone SBSs was a substantially scaled down version of that section reflecting the simpler calculation these

²⁹⁰ See FOCUS Report Part II, as amended, *Computation of Net Capital (Filer Not Authorized to Use Models)*. The following change is being made: Line 12 now clarifies in parentheses that Line 12 is equal to the “sum of Lines 9A through 9E, 10, and 11.”

²⁹¹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25229.

entities would perform under the proposed nonbank SBSB capital rule (Rule 18a-1). The Commission received no comment on either of the proposed sections and has adopted capital requirements for nonbank SBSBs under which these firms will need to calculate a minimum net capital requirement.²⁹² However, because an OTCDD/SBSB will be subject to Rule 18a-1, the Computation of Minimum Regulatory Capital Requirements sections have been modified to indicate that an OTCDD/SBSB must complete the simpler section that will also be used by stand-alone SBSBs. Consequently, these sections in proposed Form SBS are being adopted with this modification and additional non-substantive modifications by retaining the parallel section in FOCUS Report Part II, as amended, to be used by stand-alone broker-dealers, broker-dealer SBSBs (other than OTCDD/SBSBs), and broker-dealer MSBSPs, and adding the section for stand-alone SBSBs and OTCDD/SBSBs.²⁹³

Computation of Tangible Net Worth

The Commission's proposed capital requirement for stand-alone MSBSPs and broker-dealer MSBSPs in Rule 18a-2 was a tangible net worth test.²⁹⁴ Accordingly, proposed Form SBS included a Computation of Tangible Net Worth section to be completed by stand-alone MSBSPs and broker-dealer MSBSPs.²⁹⁵ The

²⁹² See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43879-906.

²⁹³ See FOCUS Report Part II, as amended, *Computation of Minimum Regulatory Capital Requirements (Broker-Dealer)* and *Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer SBSB)*. The following changes are being made: (1) because Line 4 appeared twice in the broker-dealer version in Form SBS, as proposed to be adopted, the second Line 4 is renumbered Line 5 and the subsequent lines are renumbered accordingly; (2) in the broker-dealer version, Line 5Bi titled "Minimum CFTC net capital requirement" adds "(if applicable)" to the end of the line to clarify that not all firms will need to complete this line; (3) to reflect the staggered implementation of the risk margin amount computation in the nonbank SBSB capital rule, Line 5 refers generally to the percentage of the risk margin amount computed under the net capital rule rather than specifically referencing "8%" of the risk margin amount; (4) in the broker-dealer version, the sub-section titled "Computation of Aggregate Indebtedness" adds "(If Applicable)" to the end of the title to clarify that not all firms will need to complete this sub-section; (5) in the broker-dealer version, for clarity and for consistency with Pre-Amendment FOCUS Report Part II, Line 10 now reads "Total aggregate indebtedness liabilities from Statement of Financial Condition (Item 1760)" instead of "Total liabilities from Statement of Financial Condition (Item 1760)"; (6) in the stand-alone SBSB version, the title of the Computation of Minimum Regulatory Capital Requirements section clarifies that it applies to a "non-broker-dealer SBSB" instead of to any "non-broker-dealer"; (7) in the stand-alone SBSB version, Line 7 corrects a cross-reference to read "(greater of Lines 5 and 6)" rather than "(greater of Lines 4 and 5)"; (8) in the stand-alone SBSB version, Line 9 corrects a cross-reference so that it refers to "Line 7" instead of "Line 6"; and (9) the instructions for the broker-dealer version correct a cross-reference to CFTC Regulation 1.17 so that it refers to "8%" (instead of "4%") of the amount required to be segregated pursuant to the CEA. See 17 CFR 1.17(a)(1)(i)(B).

²⁹⁴ See *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70256-57.

²⁹⁵ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25230.

Commission received no comment on this section. However, the Commission ultimately adopted Rule 18a-2 to apply solely to stand-alone MSBSPs (*i.e.*, not to broker-dealer MSBSPs, which are subject to Rule 15c3-1).²⁹⁶ Accordingly, the Computation of Tangible Net Worth section in proposed Form SBS is being adopted as an addition to the FOCUS Report Part II with the modification that it applies only to stand-alone MSBSPs.²⁹⁷

*Statement of Income (Loss) or Statement of
Comprehensive Income*

The Pre-Amendment FOCUS Reports have a Statement of Income (Loss) section in which filers enter information about revenues and expenses. In 2012, the Commission approved a FINRA rule change to adopt Form SSOI (Supplemental Statement of Income), which elicits more detailed information about revenues and expenses.²⁹⁸ Proposed Form SBS included a Statement of Income (Loss) section modeled on the more detailed Form SSOI to simplify the filings broker-dealers would need to make with the Commission and their designated examining authority (“DEA”).²⁹⁹

The Commission proposed to incorporate Form SSOI into the Statement of Income (Loss) section of proposed Form SBS. The Commission understands, however, that firms sometimes are required to disclose their FOCUS Reports to third parties for commercial reasons, potentially raising privacy concerns. The Commission further understands that the income information disclosed in Form SSOI is highly proprietary, given the level of detail required to be disclosed in the form. Moreover, the Commission already has access to the information in Form SSOI. Consequently, the Commission believes that it is not necessary to incorporate all the Form SSOI elements into the Statement of Income (Loss).³⁰⁰

²⁹⁶ See Rule 18a-2, as adopted.

²⁹⁷ See FOCUS Report Part II, as amended, *Computation of Tangible Net Worth*.

²⁹⁸ See Self-Regulatory Organizations; FINRA; *Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified By Amendment No. 2, Adopting FINRA Rule 4524 (Supplemental FOCUS Information) and Proposed Supplementary Schedule to the Statement of Income (Loss) Page of FOCUS Reports*, Exchange Act Release No. 66364 (Feb. 9, 2012), 77 FR 8938 (Feb. 15, 2012).

²⁹⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25229-30.

³⁰⁰ The Commission renamed this section of the form in 2018. See *Disclosure Update and Simplification*, Exchange Act Release No. 83875 (Aug. 17, 2018), 83 FR 50148 (Oct. 4, 2018).

The Commission recently amended the Statement of Income (Loss) sections in FOCUS Report Parts II, IIA, and IIB to elicit information about comprehensive income and rename the sections “Statement of Income (Loss) or Statement of Comprehensive Income.”³⁰¹ Accordingly, the Statement of Income (Loss) in proposed Form SBS is being adopted by retaining the Statement of Income (Loss) or Statement of Comprehensive Income section in FOCUS Report Part II, as amended. However, the Commission is adding a new line – Line 3 – to the Statement of Income (Loss) or Statement of Comprehensive Income, as amended. This line elicits information about gains or losses from derivatives trading that was elicited on Line Item 3926 on Form SSOI and FOCUS Report Part II CSE. The Commission is also adopting several other non-substantive modifications to this section of FOCUS Report Part II.³⁰² The Statement of Income (Loss) or Statement of Comprehensive Income must be completed by stand-alone broker-dealers and broker-dealer and stand-alone SBSDs and MSBSPs.

Capital Withdrawals and Capital Withdrawals – Recap

The Pre-Amendment FOCUS Report Parts II, IIB, and II CSE have a Capital Withdrawal section and a Capital Withdrawals – Recap section that elicit details about filers’ ownership equity and subordinated liabilities maturing or proposed to be withdrawn within the next six months, and accruals which have not been deducted in the computation of net capital. Proposed Form SBS had these two sections, which were largely modeled on the parallel sections in Pre-Amendment FOCUS Report Parts II and II CSE.³⁰³ The Commission

³⁰¹ See *id.*

³⁰² See revised FOCUS Report Part II, as amended, *Statement of Income (Loss) or Statement of Comprehensive Income*. The following changes are made: (1) on Line 5, “Profit or losses from underwriting and selling groups” is replaced with “Gains or losses from underwriting and selling groups” for consistency with the terminology used in Lines 2 and 3; (2) on Line 10, “Commodities revenue” is replaced with “Gains or losses on commodities” for consistency with the terminology used in Lines 1 through 5; (3) in the instructions for this section, “brokers” is globally replaced with “broker-dealers”; (4) Line 36 is updated to read “Net income (current month only) before *comprehensive income* and provision for federal income taxes” (emphasis added) in response to broker-dealers’ requests for clarification after the adoption of the Commission’s *Disclosure Update and Simplification* release; (5) in the instructions for this section, the instruction for “principal transaction including unrealized gains and losses” is not included because it does not correspond with a specific line of this section; and (6) the *Statement of Income (Loss) or Statement of Comprehensive Income* section also contains non-substantive punctuation changes.

³⁰³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25226.

received no comment on these sections and has adopted capital requirements for nonbank SBSBs under which these firms will be subject to a net capital requirement.³⁰⁴ Consequently, the Commission is adopting these sections in proposed Form SBS by retaining the parallel sections in FOCUS Report Part II, as amended, with certain non-substantive modifications.³⁰⁵ These sections are required to be completed by stand-alone broker-dealers, stand-alone SBSBs, and broker-dealer SBSBs and MSBSPs.

Financial and Operational Data

The Pre-Amendment FOCUS Report Part II CSE included a Financial and Operational Data section that elicited detail about filers' operations, including operational deductions from capital and potential operational charges not deducted from capital. Proposed Form SBS had a Financial and Operational Data section modeled largely on the parallel section in Pre-Amendment FOCUS Report Part II CSE.³⁰⁶ The Commission received no comment on this proposed section and has adopted capital requirements for nonbank SBSBs under which these firms will need to calculate a minimum net capital requirement.³⁰⁷ Consequently, the Commission is adopting this section in proposed Form SBS by retaining the parallel section in FOCUS Report Part II, as amended, with non-substantive changes for clarity.³⁰⁸ The section must be completed by stand-alone broker-dealers, stand-

³⁰⁴ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43879-906.

³⁰⁵ See FOCUS Report Part II, as amended, *Capital Withdrawals* and *Capital Withdrawals – Recap*. The following changes are being made: (1) for internal consistency and to avoid confusion with the schedules at the end of revised FOCUS Report Part II, the text at the bottom of the Capital Withdrawals section now refers to “This section” instead of “The schedule”; (2) for internal consistency with Lines 1A and 1A2 in the Capital Withdrawals – Recap section which reference LLCs, the title for the Statement of Changes in Ownership Equity subsection now references LLCs in the parenthetical “(sole proprietorship, partnership, LLC or corporation)”; (3) Line 1A in the Statement of Changes in Ownership Equity subsection replaces “Net income (loss)” with “Net income (loss) or comprehensive income (loss), as applicable” for consistency with the references to net income and comprehensive income in the remainder of the FOCUS Report, as amended in the Commission’s 2018 *Disclosure Update and Simplification* release; and (4) Line 1B in the Statement of Changes in Ownership Equity subsection titled “Additions (including non-conforming capital of)” is assigned Line Item 4263 (for consistency with Pre-Amendment FOCUS Report Part II) instead of 4262. Pre-Amendment FOCUS Report Part II assigns “Additions (including non-conforming capital of)” the number 4263, while FOCUS Report Part II CSE assigns “Additions (including non-conforming capital of)” the number 4262). Since the form being adopted in this release is FOCUS Report Part II, it is preferable to be more consistent with Pre-Amendment FOCUS Report Part II than FOCUS Report Part II CSE.

³⁰⁶ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25226.

³⁰⁷ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43883-86.

³⁰⁸ See FOCUS Report Part II, as amended, *Financial and Operational Data*. The following changes are being made: (1) for internal consistency and to avoid confusion with the schedules at the end of revised FOCUS Report Part II, this section is no longer referred to as a “schedule;” and (2) the word “mailed” is replaced with “sent” on Line 5 and the corresponding instructions to reflect that customer confirmations can be emailed in addition to mailed.

alone SBSDs, and broker-dealer SBSDs and MSBSPs.

Computation for Determination of Customer Reserve Requirements

Pre-Amendment FOCUS Report Parts II and II CSE have a Computation for Determination of Reserve Requirements section that elicited detail about filers' customer reserve computation under the broker-dealer customer protection rule (Rule 15c3-3). Proposed Form SBS had a Computation for Determination of Customer Reserve Requirements section modeled largely on the parallel section in Pre-Amendment FOCUS Report Part II CSE.³⁰⁹ The Commission received no comment on this section in proposed Form SBS and is adopting it by retaining the parallel section in FOCUS Report Part II, as amended, with non-substantive changes for clarity.³¹⁰ This section must be completed by stand-alone broker-dealers and broker-dealer SBSDs and MSBSPs.

Possession or Control for Customers

Pre-Amendment FOCUS Report Parts II and II CSE have an Information for Possession or Control Requirements section that elicits detail about securities kept in possession or control for customers under Rule 15c3-3. Proposed Form SBS had a Possession or Control for Customers section modeled on the parallel section in Pre-Amendment FOCUS Report Part II CSE.³¹¹ The Commission received no comment on this section of proposed Form SBS and is adopting it by retaining the parallel section in FOCUS Report Part II, as amended, with non-substantive changes for clarity.³¹² This section must be completed by stand-alone broker-dealers and broker-dealer SBSDs and MSBSPs.

³⁰⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25226.

³¹⁰ See FOCUS Report Part II, as amended, *Computation for Determination of Customer Reserve Requirements*. To avoid confusion between the customer and security-based swap customer reserve requirements, this section is retitled "Computation for Determination of Customer Reserve Requirements" (emphasis added), and the instructions are updated accordingly. In addition, in response to commenters, the section includes a clarification that the notes referenced in this section appear in 17 CFR 240.15c3-3a (Rule 15c3-3a) (Exhibit A to Rule 15c3-3). See SIFMA 9/5/2014 Letter.

³¹¹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25226.

³¹² See FOCUS Report Part II, as amended, *Possession or Control for Customers*. To avoid confusion between the customer and security-based swap customer possession and control requirements, this section is retitled "Possession or Control for Customers," and the instructions are updated accordingly.

Computation for Determination of PAB Requirements

In 2013, the Commission amended Rule 15c3-3 to establish PAB reserve bank account requirements under which a broker-dealer must perform a reserve account calculation with respect to broker-dealer clients that is similar to the calculation for customers discussed above.³¹³ Proposed Form SBS included a Computation for Determination of PAB Requirements section for filers to input this calculation.³¹⁴ The Commission received no comment on this proposed section of Form SBS and is adding it to FOCUS Report Part II, as amended, with non-substantive changes for clarity.³¹⁵ The section must be completed by stand-alone broker-dealers and broker-dealer SBSDs and MSBSPs.

Claiming an Exemption from Rule 15c3-3

Pre-Amendment FOCUS Report Part II has a section for broker-dealers claiming an exemption from Rule 15c3-3 to identify the paragraph of the rule upon which the firm's exemption is based. Proposed Form SBS had a similar section modeled on the parallel section in Pre-Amendment FOCUS Report Part II.³¹⁶ The Commission received no comment on this section of proposed Form SBS and is adopting it by retaining the parallel section in FOCUS Report Part II, as amended, with non-substantive changes for clarity and accuracy.³¹⁷ This section must be completed by stand-alone broker-dealers and broker-dealer SBSDs and MSBSPs claiming

³¹³ See *Financial Responsibility Rules for Broker-Dealers*, 78 FR at 51903. Paragraph (a)(16) of Rule 15c3-3 defines "PAB account" as "a proprietary securities account of a broker or dealer (which includes a foreign broker or dealer, or a foreign bank acting as a broker or dealer) other than a delivery-versus-payment account or a receipt-versus-payment account." The paragraph further provides that the "term does not include an account that has been subordinated to the claims of creditors of the carrying broker or dealer."

³¹⁴ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25226.

³¹⁵ See revised FOCUS Report Part II, as amended, *Computation for Determination of PAB Requirements*. In addition, in response to commenters, the section includes a clarification that the notes referenced in this section appear in Exhibit A to Rule 15c3-3 (Rule 15c3-3a). See SIFMA 9/5/2014 Letter.

³¹⁶ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25226.

³¹⁷ See FOCUS Report Part II, as amended, *Claiming an Exemption from Rule 15c3-3*. The following changes are being made: (1) The instruction to "check one only" is replaced with "check all that apply" as a firm can claim more than one exemption from Rule 15c3-3; (2) the incorrect references to paragraphs "(k)(2)(A)" and "(k)(2)(B)" of Rule 15c3-3 are replaced with correct references to paragraphs (k)(2)(i) and (ii) of Rule 15c3-3; and (3) due to the inadvertent omission of instructions regarding this section, the instructions to FOCUS Report Part II, as amended, are updated to direct stand-alone broker-dealers, broker-dealer SBSDs, and broker-dealer MSBSPs that are claiming an exemption from Rule 15c3-3 to complete this section.

an exemption from Rule 15c3-3.

*Computation for Determination of Security-Based Swap
Customer Reserve Requirements*

The Commission’s proposed segregation requirements for SBSDs in Rule 18a-4 required them to maintain a security-based swap customer reserve account and to determine the amount kept in the account using the formula in 17 CFR 240.18a-4a (Exhibit A to Rule 18a-4).³¹⁸ Accordingly, proposed Form SBS had a section titled “Computation for Determination of the Amount to be Maintained in the Special Reserve Account for the Exclusive Benefit of Security-Based Swap Customers” in which an SBSD would enter its security-based swap reserve account calculation.³¹⁹ The Commission received no comment on this section. However, the final segregation rules codified the security-based swap reserve account requirements in: (1) Rule 15c3-3 to apply to stand-alone broker-dealers and broker-dealer SBSDs and MSBSPs; and (2) Rule 18a-4 to apply to stand-alone SBSDs.³²⁰ Consequently, the Commission is adopting the section in proposed Form SBS by adding it to FOCUS Report Part II, as amended, with non-substantive changes for consistency internally and with Rules 15c3-3 and 18a-4.³²¹ The modifications also include an instruction that the section must be completed by stand-alone broker-dealers in addition to broker-dealer SBSDs and MSBSPs.

Possession or Control for Security-Based Swap Customers

The Commission’s proposed segregation requirements for SBSDs in Rule 18a-4 required them to

³¹⁸ See *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70282-87.

³¹⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25230-31.

³²⁰ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43930-43.

³²¹ See FOCUS Report Part II, as amended, *Computation for Determination of Security-Based Swap Customer Reserve Requirements*. The following changes are being made: (1) references to Rule 18a-4 are removed from the section’s title, line items, and instructions to accurately reflect that the security-based swap customer reserve requirement adopted by the Commission is located in Rules 15c3-3 and 18a-4 (instead of solely in Rule 18a-4 as initially proposed by the Commission); (2) the parenthetical “(See Note A)” is added to Line 1 for consistency with Line 1 of the Computation for Determination of Customer Reserve Requirements section in revised FOCUS Report Part II, and in response to commenters, the section includes a clarification that the notes referenced in this section appear in Exhibit B to Rule 15c3-3 or Exhibit A to Rule 18a-4, as applicable (see SIFMA 9/5/2014 Letter); and (3) in Lines 24 and 26, “Reserve Bank Account(s)” is replaced with “Reserve Account(s)” for consistency with paragraph (a)(9) of Rule 18a-4, as adopted (see paragraph (a)(9) of Rule 18a-4, as adopted).

maintain possession or control over excess security collateral.³²² Accordingly, proposed Form SBS had a section titled “Information for Possession or Control Requirements Under Rule 18a-4” that elicits detail about excess securities collateral kept in possession or control for customers under proposed Rule 18a-4.³²³ The Commission received no comment on this section of proposed Form SBS. However, the final segregation rules codified the security-based swap reserve account requirements in: (1) Rule 15c3-3 to apply to stand-alone broker-dealers and broker-dealer SBSDs and MSBSPs; and (2) Rule 18a-4 to apply to stand-alone SBSDs.³²⁴ Consequently, the Commission is adopting the section in proposed Form SBS by adding it to FOCUS Report Part II, as amended, with non-substantive changes for consistency internally and with Rules 15c3-3 and 18a-4.³²⁵ The modifications also include an instruction that the section must be completed by stand-alone broker-dealers in addition to broker-dealer SBSDs and MSBSPs.

Claiming an Exemption from Rule 18a-4

As adopted, Rule 18a-4 applies to stand-alone and bank SBSDs and to OTCDD/SBSDs.³²⁶ In addition, the final rule exempts these SBSDs from its requirements of if the SBSD meets certain conditions, including that the SBSD does not clear security-based swap transactions for other persons, provides notice to the counterparty regarding the right to segregate initial margin at an independent third-party custodian, and discloses in writing that any collateral received by the SBSD for non-cleared security-based swaps will not be subject to a segregation requirement and regarding how a claim of the counterparty for the collateral would be treated in a bankruptcy or other formal liquidation proceeding of the SBSD. In light of these modifications to the rule from the proposal (which did not provide an exemption), the Commission is adding a line item to the

³²² See *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70278-82.

³²³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25231.

³²⁴ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43930-43.

³²⁵ See FOCUS Report Part II, as amended, *Possession or Control for Security-Based Swap Customers*. References to Rule 18a-4 are removed from the section’s title, line items, and instructions in order to accurately reflect that the possession or control requirements adopted by the Commission are located in Rules 15c3-3 and 18a-4 (instead of solely in Rule 18a-4 as initially proposed by the Commission).

³²⁶

FOCUS Report Part II for a stand-alone SBSB or OTCDD/SBSB to indicate whether the firm is claiming an exemption from Rule 18a-4.³²⁷

Sections Completed by FCMs

FCMs are required to periodically file Form 1-FR-FCM with the CFTC and their designated SRO.³²⁸ The form elicits financial and operational information about an FCM. To account for broker-dealers that are dually registered as FCMs, Pre-Amendment FOCUS Report Parts II and II CSE incorporate, in substantially the same format, most of the sections in Form 1-FR-FCM. A broker-dealer dually registered as an FCM was permitted to file Pre-Amendment FOCUS Report Part II or II CSE (as applicable) with the CFTC and its designated SRO rather than Form 1-FR-FCM.³²⁹

Proposed Form SBS contained the following sections from Form 1-FR-FCM in order to permit dual registrants to file Form SBS (rather than Form 1-FR-FCM) with the CFTC and its designated SRO: (1) a Computation of CFTC Minimum Net Capital Requirement; (2) a Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) a Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the CEA; (4) a Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; (5) a Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7 (and Foreign Futures and Foreign Options Secured Amounts Summary); and (6) a Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7 (and Funds Deposited in Separate CFTC Regulation 30.7 Accounts) (17 CFR 30.7).³³⁰ The Commission received no comment on these

³²⁷ See FOCUS Report Part II, as amended, *Claiming an Exemption from Rule 18a-4*.

³²⁸ See 17 CFR 1.10. See also Form 1-FR-FCM, available at <http://www.nfa.futures.org/NFA-registration/templates-and-forms/form1FR-fcm.HTML>.

³²⁹ See 17 CFR 1.10(h) (allowing broker-dealers to file the FOCUS Report instead of Form 1-FR-FCM so long as all information required to be furnished on and submitted with Form 1-FR-FCM is provided with the FOCUS Report).

³³⁰ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25232-33.

sections of proposed Form SBS and is adopting them by retaining or adding them to FOCUS Report Part II, as amended, with non-substantive changes.³³¹ These sections will be filed by broker-dealers that are dually registered with the CFTC as FCMs. The Commission believes that this will promote harmonization with CFTC requirements.

Defined Terms in the Schedules to FOCUS Reports Parts II and IIC

Pre-Amendment FOCUS Report Part II CSE has schedules that elicit information about derivatives positions, counterparties, and exposures. Proposed Form SBS included four schedules that were modeled largely on the schedules to Pre-Amendment FOCUS Report Part II CSE. As discussed in detail below, the Commission is adopting the schedules to proposed Form SBS by adding all four of them to FOCUS Report Part II, as amended, and including one of them in FOCUS Report Part IIC, as adopted. As proposed, the schedules contained the following common terms that were defined in the proposed instructions to Form SBS: (1) “gross replacement value”, also referred to as “gross replacement value – receivable”; (2) “gross replacement value – payables”; (3) “net replacement value”; (4) “current net exposure”; (5) “total exposure”; and (6) “margin collected.”³³² For the sake of clarity, the term “total exposure” is revised to the term “current net and potential exposure” in FOCUS Report Part II, as amended, and FOCUS Report Part IIC, as adopted, and in the

³³¹ See FOCUS Report Part II, as amended, *Computation of CFTC Minimum Capital Requirements, Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges, Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act, Statement of Segregation Requirements and Funds in Segregation for Customers’ Dealer Options Accounts, Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7, Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7*. The following non-substantive changes were made: (1) the parenthetical “(under)” is added to Line 16 of the Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges for consistency with the language used in Form 1-FR-FCM; and (2) instead of using the placeholder line item number “9999”, the line item numbers recently assigned in FINRA’s eFOCUS system are used for the following lines: Lines 15 and 16 in the *Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges*, Lines 15 and 16 in the *Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act*, Lines 1 through 7 in the *Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7*, and Lines 9 through 11 in the *Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7*.

³³² See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25233-34.

instructions to the forms.³³³ The definition of the term is not revised. The Commission received no comment on the remaining terms and their definitions and is adopting them as proposed.³³⁴

Schedule 1 to FOCUS Report Part II

Pre-Amendment FOCUS Report Part II CSE has a schedule titled “Aggregate Securities and OTC Derivatives Positions” that required ANC broker-dealers to report the month-end gross replacement value of aggregate long and short positions in various categories of financial instruments held by the firm.³³⁵ Schedule 1 to proposed Form SBS was modeled largely on this schedule but instead of including a single line for derivatives, it required filers to enter the aggregate long and short positions for cleared and non-cleared: (1) debt security-based swaps (other than credit default swaps); (2) equity security-based swaps; (3) credit default security-based swaps; and (4) other security-based swaps.³³⁶ It required the same information with respect to mixed swaps and the following categories of swaps: (1) interest rate swaps; (2) foreign exchange swaps; (3) commodity swaps; (4) debt index swaps (other than credit default swaps); (5) equity index swaps; (6) credit default swaps; and (7) other swaps.

A commenter raised concerns about the practicality of reporting exposures to these subcategories of financial instruments, including the potential that firms will interpret them differently.³³⁷ The Commission believes it is important to record separately amounts attributable to security-based swaps, mixed swaps, and swaps given the Commission’s supervisory responsibilities regarding these products. The Commission further believes, however, that requiring reporting of the exposures to the subcategories of instruments could lead to inconsistent reporting across filers, which, in turn, could diminish the utility of receiving this information in

³³³ See FOCUS Report Part II as amended; instructions to FOCUS Report Part II, as amended.

³³⁴ See instructions to FOCUS Report Part II, as amended, *Definitions*; instructions to FOCUS Report Part IIC, as adopted, *Definitions*.

³³⁵ Pre-Amendment FOCUS Report Part IIB has a similar schedule.

³³⁶ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25234.

³³⁷ See Memorandum from the Division of Trading and Markets regarding an April 30, 2015 meeting with representatives of the Securities Industry and Financial Markets Association (May 5, 2015) (“SIFMA 4/30/2015 Meeting”).

terms of comparing firms. Accordingly, Schedule 1 to the FOCUS Report Part II, as amended, elicits the amounts attributable to cleared and non-cleared security-based swaps, mixed swaps, and swaps, and includes definitions for these products in the instructions, but no longer elicits information regarding the sub-categories. The Commission also received comment that “bought” and “sold” could help clarify the schedule,³³⁸ and in response the columns in Schedule 1 to FOCUS Report Part II, as amended, are relabeled “long/bought” and “short/sold” and the instructions are updated accordingly.

The details in Schedule 1 may be of increased value to examiners if the totals in the schedule (Line Items 8370 and 8371) match the amounts reported for total securities, commodities, and swap positions in the Statement of Financial Condition (Line Items 12024 and 12044). Accordingly, the “Other securities and commodities” and “Securities with no ready market” lines are moved up to Lines 12 and 13 (instead of Lines 16 and 17) in Schedule 1 so that they can be included in the subtotal for “Total net securities and spot commodities.” In addition, Schedule 1 now elicits “Counterparty netting” and “Cash collateral netting” and includes these amounts in the subtotal for “Total derivative receivables and payables.” Consequently, the totals on Schedule 1, titled “Total net securities, commodities, and swaps positions,” are now equal to the sum of “Total net securities and spot commodities” and “Total derivative receivables and payables.”³³⁹

For the foregoing reasons, the Commission is adopting Schedule 1 to proposed Form SBS by adding it to FOCUS Report Part II, as amended, with the modifications discussed above.³⁴⁰ Schedule 1 must be completed by stand-alone broker-dealers and stand-alone and broker-dealer SBSBs and MSBSPs.

³³⁸ See, e.g., SIFMA 9/5/2014 Letter.

³³⁹ For clarity and accuracy, the total line now reads “Total net securities, commodities, and swaps positions (sum of Lines 14 and 21)” instead of “Total (sum of Lines 1-17).” A commenter requested additional detail regarding firms’ hedging activities. See Levin Letter. The final rule does not require the linking of hedges as requested by the commenter. However, because the Commission believes that it would be difficult to identify and pair product hedges and therefore report hedges, the Commission believes that linking the totals in Schedule 1 to the lines on the Statement of Financial Condition will provide examiners with additional detail about filers’ securities and derivatives positions that partially addresses the concerns underlying this comment.

³⁴⁰ See FOCUS Report Part II, as amended, *Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions*.

Schedule 2 to FOCUS Report Part II

Pre-Amendment FOCUS Report Part II CSE has a schedule titled “Credit-Concentration Report for Fifteen Largest Net Exposures in Derivatives” that requires ANC broker-dealers to provide details about the fifteen counterparties to which they have the largest credit exposures in derivatives.³⁴¹ Schedule 2 to proposed Form SBS had two tables that were modeled largely on this schedule.³⁴² The first table would require the filer to identify in the first column the fifteen counterparties to which the firm had the largest current net exposure, in order from the largest to the smallest current net exposure. The second table would require the filer to identify in the first column the fifteen counterparties to which the firm had the largest total exposure, in order from the largest to the smallest total exposure.

A commenter raised concerns about the potential ramifications if counterparties obtained this information and disagreed with the internal credit rating assigned to them.³⁴³ The Commission acknowledges that firms may be required to disclose the FOCUS Report Part II to counterparties and other third parties for commercial reasons, and that this could cause internal credit ratings to be disclosed to the rated entity. The disclosure of this information or the potential disclosure of the information to the rated entity could negatively affect the integrity of the filer’s credit risk function. For example, it could give firms an incentive to assign a higher internal credit rating than warranted to avoid negatively affecting its relationship with a counterparty and potentially losing that entity’s business. Accordingly, the Commission is modifying the table so that it continues to require counterparty identifiers but no longer elicits the internal credit rating assigned to a particular counterparty. This information is available to Commission staff through its monitoring and examination programs.

For the foregoing reasons, Commission is adopting Schedule 2 to proposed Form SBS by adding it to

³⁴¹ Pre-Amendment FOCUS Report Part IIB has a schedule titled “Credit-Concentration Report for Twenty Largest Current Net Exposures.”

³⁴² *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25234-35.

³⁴³ *See* SIFMA 4/30/2015 Meeting.

FOCUS Report Part II, as amended, with the modification discussed above.³⁴⁴ Schedule 2 must be completed by stand-alone broker-dealers that are authorized to calculate net capital using internal models and all stand-alone and broker-dealer SBSs and MSBSs.

Schedule 3 to FOCUS Report Part II

Pre-Amendment FOCUS Report Part II CSE has a schedule titled “Portfolio Summary of OTC Derivatives Exposures by Internal Credit Rating” that required ANC broker-dealers to provide details about their aggregate credit exposures to counterparties grouped by the internal credit rating assigned to the counterparty.³⁴⁵ Schedule 3 to proposed Form SBS had a table modeled on this schedule.³⁴⁶ The table would require the filer to set forth its internal credit rating scale in the left hand column. For each notch in the rating scale, the filer would need to provide detail about aggregate amounts of exposures and collateral collected from the counterparties rated at that notch. The Commission received no comment on Schedule 3 to proposed Form SBS and is adopting it by adding the schedule to FOCUS Report Part II, as amended.³⁴⁷ Schedule 3 must be completed by stand-alone broker-dealers that are authorized to calculate net capital using internal models and all stand-alone and broker-dealer SBSs and MSBSs.

Schedule 4 to FOCUS Report Part II

Pre-Amendment FOCUS Report Part II CSE has a schedule titled “Geographic Distribution of Derivatives Exposures for Ten Largest Countries” that required ANC broker-dealers to provide details about their OTC derivatives exposures grouped by country.³⁴⁸ Schedule 4 to proposed Form SBS included two tables

³⁴⁴ See FOCUS Report Part II, as amended, *Schedule 2 – Credit Concentration Report for Fifteen Largest Exposures in Derivatives*.

³⁴⁵ Pre-Amendment FOCUS Report Part IIB has a schedule titled “Portfolio Summary of OTC Derivatives Exposures” that elicits the credit rating category of the counterparty.

³⁴⁶ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25235.

³⁴⁷ See FOCUS Report Part II, as amended, *Schedule 3 – Portfolio Summary of Derivatives Exposures by Internal Credit Rating*.

³⁴⁸ Pre-Amendment FOCUS Report Part IIB has a schedule titled “Geographic Distribution of OTC Derivatives Exposures” that elicits the top ten country exposures by residence of main operating company.

modeled on this schedule.³⁴⁹ The first table would require the filer to identify in the left column the ten largest countries in terms of the filer's aggregate current net exposure to counterparties located in the country, in order from the largest to the smallest current net exposure amounts. The second table would require the filer to identify in the left column the ten largest countries in terms of the filer's total exposure to counterparties located in the country, in order from the largest to the smallest total exposure amounts. The Commission received no comment on Schedule 4 and is adopting it by adding the schedule to the FOCUS Report Part II, as amended.³⁵⁰ Schedule 4 must be completed by stand-alone broker-dealers that are authorized to calculate net capital using internal models and all stand-alone and broker-dealer SBSDs and MSBSPs.

ii. FOCUS Report Part IIC

As discussed above, the Commission is requiring bank SBSDs and MSBSPs to report certain general financial information on new FOCUS Report Part IIC to facilitate monitoring these registrants' financial condition. The Commission's reporting requirements for bank SBSDs and MSBSPs generally are designed to be tailored specifically to their activities as an SBSD or an MSBSP. Accordingly, FOCUS Report Part IIC, as adopted, is based on FFIEC Form 031, which most banks are required to file on a quarterly basis.³⁵¹ FFIEC Form 031 elicits financial and operational information about a bank that is entered into uniquely numbered line items.

FOCUS Report Part IIC, as adopted, requires bank SBSDs and MSBSPs to report certain information they already report on FFIEC Form 031. Specifically, it includes: (1) a Balance Sheet section that largely mirrors Schedule RC to FFIEC Form 031; (2) a Regulatory Capital section that is a scaled-down version of Schedule RC-R to FFIEC Form 031; and (3) an Income Statement section that is a scaled-down version of Schedule RI to FFIEC Form 031. If the same line appears in both FFIEC Form 031 and FOCUS Report Part

³⁴⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25235.

³⁵⁰ See FOCUS Report Part II, as amended, *Schedule 4 – Geographic Distribution of Derivatives Exposures for Ten Largest Countries*.

³⁵¹ See 12 U.S.C. 161; 12 U.S.C. 324; 12 U.S.C. 1464; 12 U.S.C. 1817. FFIEC Form 031 is available at http://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_201303_f.pdf.

IIC, as adopted, the same line item number is used in both forms, except that the FOCUS Report Part IIC line item ends with an additional “b” character.³⁵²

One commenter pointed out that not all banks file FFIEC Form 031, noting that U.S. branches and agencies of foreign banks file FFIEC Form 002.³⁵³ The Commission acknowledges that there are multiple types of FFIEC reporting forms, but modeled the FOCUS Report Part IIC on the form it believes most bank SBSs and MSBSPs will use. FFIEC Form 031 is filed by banks with both domestic and foreign offices, while FFIEC Form 041 is filed by banks with domestic offices only. All of the line items that appear on FOCUS Report Part IIC, as adopted, appear on both FFIEC Form 031 and FFIEC Form 041, except for three line items which do not apply to FFIEC Form 041 filers.³⁵⁴

In addition to the sections drawn from FFIEC Form 031, FOCUS Report Part IIC, as adopted, includes sections for: (1) a Computation for Determination of Security-Based Swap Customer Reserve Requirements; (2) Possession or Control for Security-Based Swap Customers; and (3) Schedule 1 – Aggregate Security-Based Swap and Swap Positions. Finally, the Commission is adopting instructions for FOCUS Report Part IIC, which closely track the instructions for proposed Form SBS and FOCUS Report Part II, as amended.³⁵⁵

Cover Page

As discussed above, proposed Form SBS included a cover page modeled largely on the cover page to

³⁵² For example, Line Item 0081 on FFIEC Form 031 is Line Item 0081b on FOCUS Report Part IIC. The letter “b” is added because some of the line items on FFIEC Form 031 are already assigned to other lines in the FOCUS Report.

³⁵³ See SIFMA 9/5/2014 Letter. The commenter also noted that foreign bank SBSs generally report financial information to their home jurisdiction in accordance with the International Financial Reporting Standards rather than U.S. Generally Accepted Accounting Principles. See *id.* However, these firms likely also file FFIEC Form 002, which is required to be prepared using U.S. Generally Accepted Accounting Principles. The FFIEC Form 002 instructions are *available at* http://www.ffiec.gov/PDF/FFIEC_forms/FFIEC002_201409_i.pdf.

³⁵⁴ Line Items 2200, 6631, and 6636 regarding foreign office deposits do not apply to FFIEC Form 041 filers, because they do not have foreign branches. Line Item 1395 regarding Tier 3 capital does not apply to FFIEC Form 041 filers, because they are not required to compute Tier 3 capital.

³⁵⁵ In addition to removing references to entities that will not file FOCUS Report Part IIC and removing references to sections and schedules that are not part of FOCUS Report Part IIC, the following change is made to FOCUS Report Part IIC’s general instructions: The instruction “Money amounts should be expressed in whole dollars.” is deleted because this instruction does not appear in the instructions accompanying FFIEC Form 031. Additional changes to FOCUS Report Part IIC’s instructions that relate to specific sections of the form are discussed in this release’s discussion of the applicable section.

Pre-Amendment FOCUS Report Part II.³⁵⁶ The Commission received no comment on the proposed cover page and is adopting it in FOCUS Report Part IIC with non-substantive changes largely to account for the fact that FOCUS Report Part IIC will only be filed by bank SBSDs and MSBSPs.³⁵⁷

Balance Sheet

A bank must report details about its assets, liabilities, and equity capital on Schedule RC to FFIEC Form 031. Schedule RC also includes a Memoranda section that elicits information about the bank's external auditors and fiscal year end. Proposed Form SBS had a *Balance Sheet* section to be completed by bank SBSDs and MSBSPs.³⁵⁸ The lines and line items in this section were the same as in Schedule RC to FFIEC Form 031, except that it did not include line items from the Memoranda section. The Commission received no comment on this proposed section and is adopting it in FOCUS Report Part IIC with non-substantive changes for consistency with Schedule RC to FFIEC Form 031.³⁵⁹ This section must be completed by bank SBSDs and MSBSPs.

Regulatory Capital

³⁵⁶ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25225.

³⁵⁷ See FOCUS Report Part IIC, *Cover Page*. The following changes are being made: (1) the line soliciting firms to check the type of registrant filing the form is shortened to only reflect the registrants required to file FOCUS Report Part IIC (bank SBSDs and MSBSPs); (2) in response to comment that proposed Form SBS did not reference foreign SBSDs or foreign MSBSPs, a line is added asking firms whether the filer is a U.S. person (see SIFMA 9/5/2014 Letter); (3) the line soliciting firms to check the reason the firm is filing FOCUS Report Part IIC is shortened to only reflect the range of reasons bank SBSDs and MSBSPs would file the report: at the special request by the Commission, pursuant to Rule 18a-7, or other; (4) the line soliciting firms to "Check here if respondent is filing an audited report" is removed, because bank SBSDs and MSBSPs are not required to file annual reports with the Commission (see 17 CFR 240.18a-7(c)(1)(i)); (5) a typographical error is corrected so the officer's title printed under the signature line matches the officer's title printed under the line for the signing officer to write out his or her name; and (6) a typographical error in the instructions is corrected so that the "Official use" line references line item 33 instead of 31.

³⁵⁸ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25231.

³⁵⁹ See FOCUS Report Part IIC, *Balance Sheet (Information As Reported On FFIEC Form 031 – Schedule RC)*. The following changes are being made: (1) Lines 4B, 4C, 13A1, 13A2, 13B1, and 13B2 are indented so their corresponding line items are not included in the Totals column; (2) on Line 8, the word "Investment" is replaced with "Investments"; (3) on Line 23, the Line Item number "3828b" is replaced with "3838b"; (4) in the instructions, clarification is added that "FFIEC Instructions" refers to "instructions accompanying FFIEC Form 031"; and (5) because the instructions direct filers to prepare this section in accordance with the FFIEC Instructions, the following sentence is deleted: "In addition, the data reported on this section should only be updated quarterly."

The prudential regulators are responsible for administering capital requirements for bank SBSDs and MSBSPs. A bank must report details about its regulatory capital on Schedule RC-R to FFIEC Form 031. Schedule RC-R also includes a Memoranda section that elicits detail about derivatives. Proposed Form SBS similarly included a regulatory capital section to be completed by bank SBSDs and MSBSPs.³⁶⁰ The lines and line items in this section were largely the same as in Schedule RC-R to FFIEC Form 031. More specifically, the proposed section required banks to enter the total amounts of the components of bank regulatory capital (*i.e.*, total Tier 1, Tier 2, or Tier 3 capital) and other summary measures, rather than requiring the level of detail required by the prudential regulators on Schedule RC-R. The Commission received no comment on this proposed section and is adopting it in FOCUS Report Part II, with non-substantive changes for consistency with Schedule RC-R to FFIEC Form 031.³⁶¹ This section must be completed by bank SBSDs and MSBSPs.

Income Statement

A bank must report details about its income or loss and expenses on Schedule RI to FFIEC Form 031. Schedule RI also includes a Memoranda section that elicits further details about the bank's income or loss. Proposed Form SBS included an income statement section to be completed by bank SBSDs and MSBSPs.³⁶² The proposed income statement section included some – but not all – of the line items on Schedule RI. More specifically, to focus the reporting on summary information and information relevant to securities and derivatives activities, the proposed income statement section included only line items from Schedule RI that require the entry of: (1) total amounts for categories of income, expense, and loss; (2) details about gains and losses on securities positions; (3) details about trading revenues; and (4) details about gains and losses on

³⁶⁰ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25231-32.

³⁶¹ See FOCUS Report Part IIC, *Regulatory Capital (Information As Reported On FFIEC Form 031 – Schedule RC-R)*. The following changes are being made; (1) on Line 7, the phrase “Total assets for leverage capital purposes” is replaced with “Total assets for the leverage ratio” and line item number “L138b” is replaced with “A224b”; (2) on Lines 8 through 10, the same line item numbers are assigned to Columns A and B; and (3) because the instructions direct filers to prepare this section in accordance with the FFIEC Instructions, the following sentence is deleted: “In addition, the data reported on this section should only be updated quarterly.”

³⁶² See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25232.

derivatives. The Commission received no comment on the proposed income statement section and is adopting it in FOCUS Report Part IIC with minor non-substantive changes.³⁶³ This section must be completed by bank SBSDs and MSBSPs.

Computation for Determination of Security-Based Swap Customer Reserve Requirements

As discussed above, FOCUS Report Part II, as amended, includes a section for broker-dealers and stand-alone SBSDs to provide a computation of their security-based swap customer reserve requirements. Proposed Form SBS would have required bank SBSDs to complete an identical section.³⁶⁴ The Commission received no comment on applying this section to bank SBSDs and is adopting it in FOCUS Report Part IIC with non-substantive changes for consistency internally and with Rules 15c3-3 and 18a-4.³⁶⁵

Possession or Control for Security-Based Swap Customers

As discussed above, FOCUS Report Part II, as amended, includes a section in which broker-dealers and stand-alone SBSDs enter information related to possession or control for security-based swap customers.

³⁶³ See FOCUS Report Part IIC, *Income Statement (Information As Reported On FFIEC Form 031 – Schedule RI)*. The following changes are being made: (1) in FOCUS Report Part IIC, the parentheticals instructing filers which lines to total are deleted from Lines 9, 9F, and 9G, because one of these parentheticals contained an inaccurate cross-reference and this change preserves flexibility in case FFIEC Form 031's lines are renumbered in the future; and (2) because the instructions direct filers to prepare this section in accordance with the FFIEC Instructions, the following sentence is deleted: "In addition, the data reported on this section should only be updated quarterly."

³⁶⁴ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25230-31.

³⁶⁵ See FOCUS Report Part IIC, *Computation for Determination of Security-Based Swap Customer Reserve Requirements*. The following non-substantive changes are being made: (1) references to Rule 18a-4 are removed from the section's title, line items, and instructions to accurately reflect that the security-based swap customer reserve requirement adopted by the Commission is located in Rules 15c3-3 and 18a-4 (instead of solely in Rule 18a-4 as initially proposed by the Commission); (2) to improve clarity, the form and instructions reflect that the section is titled "Computation for Determination of Security-Based Swap Customer Reserve Requirements" instead of "Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers – Rule 18a-4, Exhibit A"; (3) the section's heading and instructions are updated to state that a stand-alone SBSD exempt from Rule 18a-4 is not required to complete this section to reflect that paragraph (f) of Rule 18a-4, as amended, provides an exemption from the rule for certain bank SBSDs; (4) the parenthetical "(See Note A)" is added to Line 1 for consistency with Line 1 of the Computation for Determination of Customer Reserve Requirements section in revised FOCUS Report Part II, and, in response to commenters, the section includes a clarification that the notes referenced in this section appear in Exhibit A to Rule 18a-4 (see SIFMA 9/5/2014 Letter); (5) in response to comment received, Lines 20 and 21 now correctly cross-reference "Line 19" instead of "Line 21" (see SIFMA 9/5/2014 Letter); (6) in Lines 23 and 25, "Reserve Bank Account(s)" is replaced with "Reserve Account(s)" for consistency with paragraph (a)(9) of Rule 18a-4; and (7) to eliminate extraneous text, the following sentence is deleted from the instructions: "The term 'security-based swap customer' is defined in 17 CFR § 240.18a-4."

Proposed Form SBS required bank SBSDs to complete an identical section.³⁶⁶ The Commission received no comment on applying this section to bank SBSDs and is adopting it in FOCUS Report Part IIC with non-substantive changes for consistency internally and with Rules 15c3-3 and 18a-4.³⁶⁷

Claiming an Exemption from Rule 18a-4

As discussed above, Rule 18a-4, as adopted, exempts bank SBSDs from the requirements of the rule if the SBSD meets certain conditions.³⁶⁸ In light of this modification to the rule from the proposal (which did not provide an exemption), the Commission is adding a line item to the FOCUS Report Part IIC for a bank SBSD to indicate whether the firm is claiming an exemption from Rule 18a-4.³⁶⁹

Schedule 1 to FOCUS Report Part IIC

As discussed above, FOCUS Report Part II, as amended, includes a Schedule 1 that elicits details about filers' aggregate long and short positions in various categories of financial instruments, including sub-categories of security-based swaps and swaps. Proposed Form SBS would have required bank SBSDs and MSBSPs to complete a similar but more truncated version of this section.³⁷⁰ The Commission received no comment on applying this truncated version of the schedule to bank SBSDs and MSBSPs. However, as discussed above, the Commission did receive comment on the practicality of reporting exposures to subcategories of security-based swaps and swaps, including the potential that firms will interpret them differently.³⁷¹ Accordingly, the Commission is modifying the proposed schedule for bank SBSDs and MSBSPs so that it no longer elicits

³⁶⁶ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25230-31.

³⁶⁷ See FOCUS Report Part IIC, *Possession or Control for Security-Based Swap Customers*. The following changes are being made: (1) references to Rule 18a-4 are removed from the section's title, line items, and instructions to accurately reflect that the possession or control requirements adopted by the Commission is located in Rules 15c3-3 and 18a-4 (instead of solely in Rule 18a-4 as initially proposed by the Commission); (2) to improve clarity, the form and instructions reflect that the section is titled "Possession or Control for Security-Based Swap Customers" instead of "Information for Possession or Control Requirements under Rule 18a-4"; and (3) the section's heading and instructions are updated to state that a stand-alone SBSD exempt from Rule 18a-4 is not required to complete this section to reflect that paragraph (f) of Rule 18a-4, as amended, provides an exemption from the rule for certain bank SBSDs.

³⁶⁸ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43933-35.

³⁶⁹ See FOCUS Report Part IIC, *Claiming an Exemption from Rule 18a-4*.

³⁷⁰ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25235.

³⁷¹ See SIFMA 4/30/2015 Meeting.

details regarding the sub-categories of security-based swaps and swaps. As discussed above, the Commission also received comment suggesting that references to “long” and “short” positions in security-based swaps, mixed swaps, and swaps³⁷² should be changed to references to “long/bought” and “short/sold” positions. The Commission agrees and is making this modification.

For the foregoing reasons, the Commission is adopting the requirement that bank SBSBs and MSBSBs must complete a truncated version of Schedule 1 by including it in FOCUS Report Part IIC, as adopted, with the modifications discussed above.

3. Filing of Annual Audited Financial Reports and Other Reports

Rule 17a-5 generally requires a broker-dealer to, among other things, annually file reports audited by a PCAOB-registered independent public accountant, disclose certain financial information to customers, and notify the Commission of a change of accountant. The rule also requires the independent public accountant to notify the broker-dealer if the accountant determines that the broker-dealer is not in compliance with certain broker-dealer financial responsibility rules or that a “material weakness,” as defined in paragraph (d)(3)(iii) of the rule, exists. As discussed above, the Commission is amending Rule 17a-5 so that it is applicable to broker-dealer SBSBs, other than OTCDD/SBSBs, and broker-dealer MSBSBs. With respect to stand-alone SBSBs and MSBSBs and OTCDD/SBSBs, the Commission is adopting in new Rule 18a-7 many requirements that parallel requirements in Rule 17a-5, as amended. However, Rule 18a-7 does not include a parallel requirement for every requirement in Rule 17a-5.³⁷³ Further, the requirements in Rule 18a-7 relating to the filing of annual audited reports and other reports do not apply to bank SBSBs and MSBSBs (as discussed above, bank SBSBs and MSBSBs are subject to requirements to file FOCUS Report Part IIC on a quarterly basis).

³⁷² *See id.*

³⁷³ The Commission did not propose in Rule 18a-7 (and is not adopting) a requirement that is parallel to the exemption report requirement in paragraph (d)(4) of Rule 17a-5 because this provision would not apply to stand-alone SBSBs and MSBSBs. Rule 18a-7 also does not include requirements that parallel the requirements in paragraphs (d)(6) and (e)(4) of Rule 17a-5, as amended, requiring broker-dealers to file certain reports with the Securities Investor Protection Corporation (“SIPC”) because stand-alone SBSBs and MSBSBs and OTCDD/SBSBs will not be members of SIPC. In addition, Rule 18a-7 does not include a requirement that parallels the requirement for a broker-dealer, other than an OTC derivatives dealer, to file Form Custody with the firm’s DEA. Additional differences between Rule 18-7 and Rule 17a-5 are discussed below.

a. Amendments to Rule 17a-5 and Adoption of Rule 18a-7

Liquidity Stress Test Reports

The Commission proposed that broker-dealers (including broker-dealer SBSBs) and stand-alone SBSBs authorized to use internal models to compute net capital be subject to liquidity stress test requirements.³⁷⁴ Consequently, the Commission proposed to amend Rule 17a-5 and include in proposed Rule 18a-7 a parallel provision to require these entities to file a monthly report with the Commission containing the results of the liquidity stress test.³⁷⁵ As consideration of the proposed liquidity stress test requirements is being deferred,³⁷⁶ the Commission is deferring consideration of these related reporting requirements.³⁷⁷

Customer Statements

Paragraph (c) of Rule 17a-5 requires, among other things, that certain broker-dealers annually send their customers audited statements that must include (along with other information) a statement of financial condition (with appropriate notes), a footnote with information about the firm's net capital, and, if applicable, information about any material weaknesses in the firm's internal control over compliance with certain broker-dealer financial responsibility rules identified in the most recent reports of the firm's auditor. In addition, this paragraph requires these broker-dealers to send their customers unaudited statements dated six months after the date of the audited statements that must include (along with other information) a statement of financial condition and a footnote containing information about the firm's net capital. Under paragraph (c)(5) of Rule 17a-5, a broker-dealer is exempt from sending the statements to customers if the broker-dealer, among other things, semi-annually sends its customers a financial disclosure statement that includes, among other things, information regarding the firm's net capital and a statement that the audited and unaudited statements are available at no charge on the broker-dealer's website and by calling a toll-free number to request a paper copy

³⁷⁴ See *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70252-70254.

³⁷⁵ See *Recordkeeping and Reporting Release*, 79 FR at 25237.

³⁷⁶ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43874.

³⁷⁷ See paragraph (a)(5)(vii) of Rule 17a-5, as amended; paragraph (a)(3)(vii) of Rule 18a-7, as adopted. The proposed reporting requirements would have been set forth in these paragraphs, which instead are being designated "[Reserved]."

of the statements. Broker-dealer SBSBs, other than OTCDD/SBSBs, and broker-dealer MSBSBs will be subject to these requirements and therefore will need to send the audited and unaudited statements to their customers, including security-based swap customers. However, these firms will be permitted to take advantage of the exemption described above.³⁷⁸

The Commission proposed in Rule 18a-7 that stand-alone SBSBs and MSBSBs be required to disclose on their websites (rather than send paper copies) information that is similar to the information broker-dealers are required to send to customers.³⁷⁹ The proposal required stand-alone SBSBs and MSBSBs to disclose on their websites an audited statement of financial condition with appropriate notes within ten business days after the date the firm is required to file its audited annual reports with the Commission. In addition, it required a stand-alone SBSB (but not an MSBSB) to disclose on its website at the same time: (1) a statement of the amount of the firm's net capital and required net capital and other information, if applicable, related to the firm's net capital; and (2) if, in connection with the firm's most recent annual reports, the report of the independent public accountant identified one or more material weaknesses, a copy of the report. Further, the proposal required stand-alone SBSBs and MSBSBs to disclose on their websites unaudited statements containing the same information as the audited statement discussed above within 30 calendar days of the date of the unaudited statements. Finally, it required stand-alone SBSBs and MSBSBs to make a paper copy of the information required to be disclosed on their websites available at no charge upon request of the customer and to maintain a toll-free number to receive such requests. The Commission received no comments on these customer disclosure proposals and is adopting them with the modification that an OTCDD/SBSB will be subject to these requirements pursuant to Rule 18a-7 (rather than Rule 17a-5).³⁸⁰

Annual Reports

³⁷⁸ See the broad definition of "customer" in paragraph (c)(4) of Rule 17a-5.

³⁷⁹ See *Capital, Margin, and Segregation Proposing Release*, 77 FR at 25237-38.

³⁸⁰ See paragraph (b) of Rule 18a-7, as adopted.

Paragraph (d) of Rule 17a-5 requires broker-dealers, among other things, to file with the Commission annual reports consisting of a financial report and either a compliance report or an exemption report, as well as reports that are prepared by an independent public accountant registered with the PCAOB covering the financial report and the compliance report or the exemption report in accordance with standards of the PCAOB. The financial report must contain financial statements, including, among others, a statement of financial condition, a statement of income, and a statement of cash flows and also must contain, as applicable, supporting schedules consisting of a computation of net capital under Rule 15c3-1, a computation of the reserve requirements under Rule 15c3-3, and information relating to the possession or control requirements under Rule 15c3-3. Generally, broker-dealers that maintain custody of customer securities and/or cash (and, therefore, do not claim an exemption from Rule 15c3-3) must file the compliance report. The report must contain statements about the broker-dealer's internal control over compliance with Rules 15c3-1, 15c3-3, 17a-13, and SRO customer account statement rules as well as statements as to whether the firm was in compliance with Rule 15c3-1 and paragraph (e) of Rule 15c3-3 (the customer reserve account requirement) as of the end of the firm's fiscal year. The exemption report must contain statements about the broker-dealer's claimed exemption from Rule 15c3-3.

The Commission proposed amending paragraph (d) of Rule 17a-5 to require a broker-dealer that was subject to proposed Rule 18a-4 (*i.e.*, a broker-dealer SBSB) ³⁸¹ to: (1) file the compliance report and related report of the independent public accountant covering the compliance report (*i.e.*, the firm could not file the exemption report even if it claimed an exemption from Rule 15c3-3); and (2) incorporate the possession or control and customer reserve requirements of the proposed SBSB segregation rule into the financial report supporting schedules and the compliance report. ³⁸²

³⁸¹ As noted above, the Commission proposed that Rule 18a-4, the SBSB segregation rule, apply to all SBSBs, but, in response to comment, adopted security-based swap segregation requirements for broker-dealers, including broker-dealer SBSBs, in paragraph (p) of the broker-dealer segregation rule, Rule 15c3-3. As a result, the Commission is modifying the cross references in paragraph (d) of Rule 17a-5 to reflect the placement of the customer protection requirements for broker-dealer SBSBs in paragraph (p) of Rule 15c3-3 rather than in paragraph (b) of Rule 18a-4 as proposed.

³⁸² See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25238-40.

The Commission also proposed parallel annual reporting requirements in proposed new Rule 18a-7 for stand-alone SBSBs and MSBSPs. The proposals required stand-alone SBSBs and MSBSPs to annually file with the Commission a financial report. In addition, they required stand-alone SBSBs to file a compliance report that contained statements about the firm’s compliance with the proposed SBSB capital and segregation rules and statements about the firm’s internal control over compliance with those rules and the proposed SBSB securities count rule. Further, the proposals required stand-alone SBSBs and MSBSPs to file reports of an independent public accountant covering the financial report and the compliance report.

The final segregation rule for stand-alone SBSBs, bank SBSBs, and OTCDD/SBSBs (Rule 18a-4) establishes an exemption from its requirements if the firm meets certain conditions.³⁸³ Consequently, the Commission is modifying the proposed annual reports provisions in Rule 18a-7 to require a stand-alone SBSB or OTCDD/SBSB that is operating under the exemption from Rule 18a-4 to file an exemption report instead of the compliance report.³⁸⁴ The exemption report for stand-alone SBSBs and OTCDD/SBSBs is modeled on the existing exemption report for broker-dealers. In the report, the SBSB must state that it met the exemptive provisions in Rule 18a-4 throughout the most recent fiscal year without exception or with one or more exceptions. If applicable, the firm will need to briefly describe the nature of each exception and the approximate dates the exception existed. In addition, the stand-alone SBSB or OTCDD/SBSB will need to file a report of its independent public accountant covering the exemption report. Permitting these firms to file the exemption report in lieu of the compliance report should reduce the costs of the audit and will result in a report that aligns more closely with their activities (*i.e.*, operating under the exemption).

Finally, a commenter requested that the Commission permit the independent public accountant to adhere to generally accepted auditing standards (“GAAS”) rather than PCAOB standards. The commenter stated that: (1) this would promote consistency with other U.S. regulators; (2) the PCAOB standards are “almost identical”

³⁸³ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43933-35 (adopting paragraph (f) of Rule 18a-4). The final segregation requirements for broker-dealer SBSBs, other than OTCDD/SBSBs, do not contain a similar exemption.

³⁸⁴ See paragraphs (c)(1)(i)(B)(2) and (c)(4) of Rule 18a-7, as adopted.

to GAAS; and (3) using GAAS would be the lowest cost alternative.³⁸⁵ The commenter also stated that the Commission should eliminate the PCAOB standards' applicability to audited compliance and exemption reports, because the requirement provides a "non-existent benefit" in light of existing Commission regulations and Commission and FINRA staff examinations.

In response, the Commission first notes that the requirement that broker-dealer annual financial statements be certified by a PCAOB-registered independent public accountant is consistent with the requirements imposed by the Exchange Act.³⁸⁶ Moreover, as noted above, this requirement applies to all broker-dealers that must file certified annual reports. Further, the PCAOB has issued attestation standards specific to the examination of compliance reports and the review of exemption reports.³⁸⁷ Consequently, the Commission does not believe it would be appropriate to amend Rule 17a-5 to permit broker-dealers subject to that rule to file annual reports that are not certified by a PCAOB-registered accountant because the firm is dually registered as an SBSD. Additionally, the Commission does not believe it would be appropriate to have the financial reports audited under PCAOB standards and the compliance or exemption report (as applicable) examined or reviewed, respectively, under GAAS.

However, the Commission believes it would be appropriate to permit SBSDs and MSBSPs subject to Rule 18a-7 to file annual reports that are certified by independent public accountants that are not registered with the PCAOB. Stand-alone SBSDs and MSBSPs are not subject to a statutory requirement that their financial statements filed with the Commission be certified by a PCAOB-registered accountant, and the audits of these entities will not be subject to the PCAOB's examination and enforcement authority. While an OTC derivatives dealer (as a broker-dealer) is subject to the statutory requirement, an OTCDD/SBSD will be subject to the same net capital rule (Rule 18a-1) and the same reporting rule (Rule 18a-7) as a stand-alone SBSD. The Commission

³⁸⁵ See Email from Mary Kay Scucci, Managing Director, Securities Industry and Financial Markets Association (Feb. 7, 2019) ("SIFMA 2/7/2019 Email").

³⁸⁶ See Section 17(e)(1)(A) of the Exchange Act (as amended by Pub. L. 107-204, section 205(c)(2) (2002)).

³⁸⁷ See PCAOB, Attestation Standard No. 1, Examination Engagements Regarding Compliance Reports of Brokers and Dealers, and Attestation Standard No. 2, Review Engagements Regarding Exemption Reports of Brokers and Dealers.

believes an OTCDD/SBSD should be treated similarly to a stand-alone SBSD because they are both subject to the same capital rule. Further, Rule 17a-12, the OTC derivatives dealer reporting rule, does not require that the auditor of an OTC derivatives dealer's annual audited financial statements be registered with the PCAOB or that the audit be conducted in accordance with standards of the PCAOB.³⁸⁸ Accordingly, the Commission believes that stand-alone SBSDs and MSBSPs and OTCDD/SBSDs should have the option to engage an independent public accountant that is not registered with the PCAOB, and that the independent public accountant engaged by the firm should have the option to use either GAAS in the United States or PCAOB standards.³⁸⁹

For these reasons, the Commission is adopting the proposed annual reports requirements with the modifications that stand-alone SBSDs and OTCDD/SBSDs operating under the exemption from Rule 18a-4 will be required to file the exemption report instead of the compliance report, that stand-alone SBSDs and MSBSPs and OTCDD/SBSDs may engage an independent public accountant that is not registered with the PCAOB, and that the accountant must undertake, as part of the engagement, to prepare its reports based on an examination or review, as applicable, of the reports prepared by the broker-dealer in accordance with GAAS in the United States or PCAOB standards.³⁹⁰ In addition, the Commission made a number of non-substantive modifications

³⁸⁸ Paragraph (b) of Rule 17a-12 provides that the statements must be audited by “a certified public accountant,” paragraph (f) provides that the accountant must be independent, and paragraph (h)(1) provides that the audit must be “made in accordance with U.S. Generally Accepted Auditing Standards.”

³⁸⁹ See Section 17(e)(1)(A) of the Exchange Act. See also Section 17(e)(1)(C) of the Exchange Act (providing the Commission with exemptive authority with respect to Section 17(e)(1)(A) of the Exchange Act).

³⁹⁰ See paragraph (d) of Rule 17a-5, amended; paragraphs (c), (e), and (f) of Rule 18a-7, as adopted.

to paragraph (d) of Rule 17a-5,³⁹¹ as proposed to be amended, and paragraph (c) of Rule 18a-7, as proposed to be adopted.³⁹²

Timing and Location of Filing

Paragraph (d)(5) of Rule 17a-5 provides that a broker-dealer, broker-dealer SBSBD, other than an OTCDD/SBBD, and broker-dealer MSBSP must file the annual reports with the Commission not more than sixty calendar days after the end of the firm's fiscal year. Paragraph (d)(6) of Rule 17a-5 requires that the broker-dealer file the annual reports: (1) at the office of the Commission for the region where the broker-dealer has its principal place of business; (2) at the Commission's principal office in Washington, DC; (3) at the principal office of the broker-dealer's DEA; and (4) with SIPC. The Commission proposed parallel filing requirements in Rule 18a-7 for stand-alone SBSBDs and MSBSPs, except that these entities would need to file the annual reports solely with the Commission.³⁹³ Broker-dealers, including OTC derivatives dealers, currently may file their annual reports electronically.³⁹⁴ The Commission is amending paragraph (d)(6) of Rule 17a-5 to provide broker-dealers, including broker-dealer SBSBDs and MSBSPs the option to file the annual reports with the Commission electronically. In addition, the Commission is modifying paragraph (c)(6) of Rule 18a-7 to provide this option to stand-alone SBSBDs, OTCDD/SBBDs, and stand-alone MSBSPs. For these reasons, the

³⁹¹ Proposed references to Rule 18a-4 in paragraph (d) of Rule 17a-5 are changed to Rule 15c3-3 because – as discussed above – the segregation requirements for broker-dealer SBSBDs are codified in Rule 15c3-3. Proposed references to Form SBS are changed to the FOCUS Report because – as discussed above – that will be the financial reporting form for SBSBDs and MSBSPs. Paragraph (d)(2)(iii) of Rule 17a-5, as amended, also contains the following non-substantive differences from the paragraph as proposed to be amended: (1) replacing the word “either” with “any of” in paragraph (d)(2)(iii) because the paragraph references more than two computations; and (2) replacing the word “the” with “Customer” in the phrase “Computation for Determination of the Reserve Requirements Under Exhibit A of § 240.15c3-3” for consistency with FOCUS Report Parts II and III.

³⁹² Proposed references to Form SBS are changed to the FOCUS Report. In addition, the final rule refers to “the Computation of Tangible Net Worth under § 240.18a-2” instead of the “the Computation for Determination of Tangible Net Worth under § 240.18a-2.” Further, the final rule refers to “a Computation for Determination of Security-Based Swap Customer Reserve Requirements under Exhibit A of § 240.18a-4)” instead of “a Computation for Determination of the Reserve Requirements under Exhibit A of § 240.18a-4.” Finally, the final rule refers to “Possession or Control for Security-Based Swap Customers under § 240.18a-4” instead of “Information Relating to the Possession or Control Requirements under § 240.18a-4.”

³⁹³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25240. Stand-alone SBSBDs and MSBSPs would not be members of SIPC and would not have a DEA.

³⁹⁴ See <https://www.sec.gov/divisions/marketreg/electronic-filing-broker-dealer-annual-reports.htm>.

Commission is adopting the proposed requirements regarding the timing and location of the filings with these modifications.³⁹⁵

Nature and Form of the Reports

Paragraph (e) of Rule 17a-5, among other things: (1) requires the broker-dealer to attach a notarized oath or affirmation to the financial reports; (2) provides that the annual reports are not confidential, except that the broker-dealer can request confidentiality for all parts of the annual reports other than the statement of financial condition and related accountant's report; and (3) requires a broker-dealer to file certain additional reports with SIPC. FOCUS Report Part III serves as the cover sheet for the annual reports and provides a template for the broker-dealer to execute the oath or affirmation. Broker-dealer SBSs, other than OTCDD/SBSs, and broker-dealer MSBSs will be subject to these requirements, as amended. The Commission proposed amendments to paragraph (e) of Rule 17a-5 and parallel nature and form of the reports requirements in Rule 18a-7 for stand-alone SBSs and MSBSs.³⁹⁶

More specifically, the Commission proposed amending paragraph (e) of Rule 17a-5 to remove the text of the oath or affirmation because the text is set forth in FOCUS Report Part III as well. The Commission received no comment on this aspect of the proposal. However, to avoid confusion as to whether this change would result in a new substantive requirement, the Commission has determined to retain the text of the oath or affirmation in paragraph (e)(2) of Rule 17a-5 and to include it in paragraph (d)(1) of Rule 18a-7.

Paragraph (e)(4)(i) of Rule 17a-5 requires a broker-dealer to file with SIPC “a report on the SIPC annual general assessment reconciliation or exclusion from membership forms that contains such information and is in such format as determined by SIPC by rule and approved by the Commission.” SIPC’s rule (SIPC Rule 600, “Rules Relating to Supplemental Report of SIPC Membership”) was approved by the Commission on March 14, 2016.³⁹⁷

³⁹⁵ See paragraphs (c)(5) and (6) of Rule 18a-7, as adopted.

³⁹⁶ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25240-41.

³⁹⁷ See *Securities Investor Protection Corporation*, Release No. SIPA-175 (Mar. 14, 2016), 81 FR 14372 (Mar. 17, 2016).

Under paragraph (e)(4)(ii) of Rule 17a-5, broker-dealers are required to file the report with the Commission pursuant to the requirements in that paragraph (which prescribes the information that must be included in, and the format of, the report). However, under paragraph (e)(4)(ii) of Rule 17a-5, broker-dealers were no longer required to do so after SIPC adopted its rule under paragraph (e)(4)(i) of Rule 17a-5 and the rule was approved by the Commission. Therefore, for fiscal years that ended on or after April 30, 2016, when SIPC's rule became effective, paragraph (e)(4)(ii) of Rule 17a-5 became moot. As a consequence, the Commission is making the technical amendment to paragraph (e)(4) of Rule 17a-5 to eliminate paragraph (e)(4)(ii). As amended, paragraph (e)(4) of Rule 17a-5 provides that: "The broker or dealer must file with SIPC a report on the SIPC annual general assessment reconciliation or exclusion from membership forms that contains such information and is in such format as determined by SIPC by rule and approved by the Commission." A broker-dealer is not required to also file the report with the Commission. There is no parallel provision in Rule 17a-12, the reporting rule for OTC derivatives dealers,³⁹⁸ or in Rule 18a-7, because these entities are not (or will not) be members of SIPC.

In addition, the Commission proposed a number of changes to FOCUS Report Part III, which before these amendments was the cover page to be attached to a broker-dealer's annual reports, to accommodate its use by OTC derivatives dealers and stand-alone SBSs and MSBSPs.³⁹⁹ The Commission also proposed amending FOCUS Report Part III to address amendments made to Rule 17a-5 in 2013.⁴⁰⁰ Further, the Commission proposed a number of non-substantive changes to FOCUS Report Part III.⁴⁰¹ The Commission received no comments on these proposed requirements and is adopting them.⁴⁰² However, the Commission is making

³⁹⁸ Paragraph (p) of Rule 17a-5 provides that an OTC derivatives dealer may comply with Rule 17a-5 by complying with Rule 17a-12.

³⁹⁹ *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25241, n. 689. The Commission's EDGAR system will be updated to reflect the amendments to FOCUS Report Part III.

⁴⁰⁰ *See Recordkeeping and Reporting Proposing Release*, 79 FR at 2524, n. 690. *See also Broker-Dealer Reports*, 78 FR 51910.

⁴⁰¹ *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25241, n. 691.

⁴⁰² *See* paragraph (e) of Rule 17a-5, as amended; paragraph (d) of Rule 18a-7, as adopted; FOCUS Report Part III, as amended. References in the paragraphs to "Form SBS" are changed to the "FOCUS Report" and references to "Rule 18a-4" in paragraph (e) of Rule 17a-5 are changed to "Rule 15c3-3."

several non-substantive changes to the original proposal to improve the clarity of FOCUS Report Part III.⁴⁰³

The Commission is also making several non-substantive changes to the checklist on the second page of FOCUS Report Part III.⁴⁰⁴

⁴⁰³ The following non-substantive changes to the rule were made. The title of the facing page was changed from “Audited Annual Report” to “Annual Reports” to more accurately reflect that multiple reports are filed with the facing page, and not all of these reports are audited. For the same reason, “report” is replaced with “filing” or “reports”, as applicable, in the phrases “Report for the period beginning _____ and ending _____,” “PCAOB-registered independent public accountant whose opinion is contained in this report”, and “This report** contains.” Similarly, because not all the accountant-prepared documents filed with the facing page are opinions, the word “opinion” is replaced with “reports” in the phrases “PCAOB-registered independent public accountant whose opinion is contained in this report” and “Claims for exemption from the requirement that the annual report be covered by the opinion of a PCAOB-registered independent public accountant must be supported by a statement of facts and circumstances relied on as the basis of the exemption.” For further confirmation of the PCAOB-registered accountant’s identity, a field was added to identify the accountant’s PCAOB registration number (if applicable). This information is publicly available on the PCAOB’s website. In the “Type of Registrant” section, the “OTC derivatives dealer” checkbox is replaced with a “Check here if respondent is an OTC derivatives dealer” for consistency with FOCUS Report Part II, and to clarify that an OTC derivatives dealer is a type of broker-dealer. To simplify text and improve accuracy, “Name and Telephone Number of” is removed from the phrase “Name and Telephone Number of Person to Contact with Regard to this Filing.” The language in the oath or affirmation is updated for consistency with the language in the oath or affirmation in paragraph (e)(2) of Rule 17a-5 and paragraph (d)(1) of Rule 18a-7.

⁴⁰⁴ The following amendments were made to the checklist. The line item for the facing page is deleted because the checklist is part of the facing page, so a firm filling out the checklist is also necessarily filling out the facing page. In new line item (e), “Statement of changes in stockholders’ equity or partners’ or sole proprietor’s capital” is replaced with “Statement of changes in stockholders’ or partners’ or sole proprietor’s equity” to match the language used in paragraph (d)(2)(i) of Rule 17a-5, paragraph (b)(2) of Rule 17a-12, and paragraph (c)(2)(i) of Rule 18a-7. “Notes to consolidated statement of financial condition” and “Notes to consolidated financial statements” are added to the checklist as new line items (b) and (g), respectively, because they are required by paragraph (d)(2)(i) of Rule 17a-5, paragraph (b)(2) of Rule 17a-12, and paragraph (c)(2)(i) of Rule 18a-7. The line items titled “Computation of net capital under 17 CFR § 240.15c3-1” and “Computation of net capital under 17 CFR § 240.18a-1” are consolidated into a single new line item (h). Because the security-based swap reserve requirements are now included in both Rule 15c3-3 (governing broker-dealers) and Rule 18a-4 (governing SBSs), cross-references to Rule 15c3-3 are added to new line items (k) and (n). To clarify that proposed line item (o) includes both the customer and PAB reserve requirements, new line item (l) is added requiring a computation for determination of PAB requirements under Exhibit A of § 240.15c3-3. In addition, for added clarity about which line items apply to securities instead of security-based swaps, the phrase “reserve requirements” is replaced with “customer reserve requirements” in new line item (j) and “possession or control requirements” is replaced with “possession or control requirements for customers” in new line item (m). Proposed line items (n) through (r) are consolidated into new line item (o) which better matches the language used in paragraph (d)(2)(iii) of Rule 17a-5, paragraph (b)(4) of Rule 17a-12, and paragraph (c)(2)(iii) of Rule 18a-7. In new line item (p), “A reconciliation between the audited and unaudited Statements of Financial Condition with respect to methods of consolidation” is replaced with “Summary of financial data for subsidiaries not consolidated in the statement of financial condition” to better match the language used in paragraph (d)(2)(i) of Rule 17a-5 and paragraph (b)(2) of Rule 17a-12. In line item (s), a reference to Rule 18a-7 is added to reflect that an exemption report can be filed pursuant this rule in addition to pursuant to Rule 17a-5. In line item (q), the phrase “in accordance with 17 CFR 240.17a-5, 17 CFR 240.17a-12, or 17 CFR 240.18a-7, as applicable” is added after “Oath or affirmation.” Proposed line item (u), “A copy of the SIPC Supplemental Report” is removed from the checklist, because for fiscal years that end on or after April 30, 2016, the supplemental report is filed only with SIPC (and not with the Commission). *See* 17 CFR 240.17a-5(e)(4); *Securities Investor Protection Corporation*, File No. SIPC-2015-01 (Mar. 14, 2016), 81 FR 14372 (Mar. 17, 2016); Letter from SIPC to All Broker-Dealers including those that pay SIPC assessments and those that claim exclusion from SIPC membership regarding SIPC Series 600 Rules (Apr. 29, 2016). In line item (w), a reference to Rule 18a-7 is added to reflect that an exemption report can be filed pursuant this rule in addition to pursuant to Rule 17a-5. Proposed line items (z), (aa), and (dd) are consolidated into new line item (u), which better matches the language used in paragraph (f)(1) of Rule 17a-5, paragraph (b) of Rule 17a-12, and paragraph (f)(1) of Rule 18a-7. The checklist also includes new line item (t), titled “Independent public accountant’s report based on an examination of the statement of financial condition” to account for a firm’s ability to request

Qualification of the Independent Public Accountant

As noted above, a broker-dealer is required to file with the Commission a report of a PCAOB-registered independent public accountant covering the annual reports. Paragraph (f) of Rule 17a-5: (1) prescribes certain minimum qualifications for the independent public accountant; (2) requires the broker-dealer to file with the Commission a statement concerning the accountant; and (3) requires the broker-dealer to file a notice when replacing the accountant. Broker-dealer SBSBs, other than OTCDD/SBSBs, and broker-dealer MSBSPs will be subject to these requirements. The Commission proposed to include in Rule 18a-7 parallel independent public accountant qualifications, statement, and notice requirements for stand-alone SBSBs and MSBSPs.⁴⁰⁵ The Commission is modifying these requirements to conform them to the modifications discussed above pursuant to which a stand-alone SBSB or MSBSP as well as an OTCDD/SBSB may engage an independent public accountant that is not registered with the PCAOB. The Commission received no other comments related to these proposed accountant qualification requirements and is adopting them with the modification discussed above.⁴⁰⁶

Engagement of the Independent Public Accountant

Paragraph (g) of Rule 17a-5 provides that the independent public accountant engaged by the broker-dealer to provide the reports covering the annual reports must, as part of the engagement, undertake to prepare the following reports, as applicable, in accordance with PCAOB standards: (1) a report based on an examination of the financial report; and (2) either a report based on an examination of certain statements in the compliance

confidential treatment for the financial statements but not the statement of financial condition. Proposed line items (bb) and (ee) are consolidated into new line item (v), which now reads “Independent public accountant’s report based on an examination of certain statements in the compliance report under 17 CFR 240.17a-5 or 17 CFR 240.18a-7, as applicable” to better reflect the language used in paragraph (g)(2)(i) of Rule 17a-5 and paragraph (f)(2)(i) of Rule 18a-7. Line item (x) is added for supplemental reports on applying agreed-upon procedures, in accordance with Rule 17a-5 (with respect to ANC broker-dealers) and Rule 17a-12 (with respect to OTC derivatives dealers). Throughout the checklist, the articles “A” and “An” are deleted as unnecessary and for internal consistency. In addition, line items are renumbered as needed due to insertions or deletions, and proposed line item (v) is moved to the end of the checklist as line item (y).

⁴⁰⁵ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25241-43.

⁴⁰⁶ See paragraph (e) of Rule 18a-7, as adopted. The modification deletes the phrase “and the independent public accountant must be registered with the Public Company Accounting Oversight Board” from the text of the final rule.

report or a report based on a review of the statements in the exemption report. Broker-dealer SBSBs, other than OTCDD/SBSBs, and broker-dealer MSBSPs will be subject to these requirements. The Commission proposed parallel engagement of accountant requirements in Rule 18a-7 for stand-alone SBSBs and MSBSPs.⁴⁰⁷ The Commission is modifying these requirements to conform them to the modifications discussed above pursuant to which a stand-alone SBSB or MSBSP as well as an OTCDD/SBSB may engage an independent public accountant that is not registered with the PCAOB and the accountant may use GAAS in the United States or PCAOB standards. The Commission received no other comments related to these proposed requirements and is adopting them with the modification discussed above and with one additional modification.⁴⁰⁸ As discussed above, the final segregation rule for stand-alone SBSBs, OTCDD/SBSBs, and bank SBSBs includes an exemption from the rule's requirements if firm meets certain conditions.⁴⁰⁹ Consequently, the Commission is requiring a stand-alone SBSB or OTCDD/SBSB that is exempt from the segregation rule to file the exemption report instead of the compliance report. Accordingly, a stand-alone SBSB or OTCDD/SBSB that is exempt from the segregation rule must engage the independent public accountant to perform a review of the firm's exemption report instead of an examination of the compliance report.⁴¹⁰

Notification of Non-Compliance or Material Weakness

Paragraph (h) of Rule 17a-5 requires the independent public accountant engaged to prepare reports covering a broker-dealer's annual reports to provide the broker-dealer with a notification if, during the course of preparing its reports, the accountant discovers the firm is not in compliance with Rule 15c3-1, 15c3-3, 17a-13, or SRO customer account statement rules, or if the accountant determines that any material weaknesses exist. If the notification from the accountant concerns an occurrence that requires the broker-dealer to provide notification to the Commission (*e.g.*, under Rule 17a-11), the broker-dealer must provide the accountant with a

⁴⁰⁷ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25243.

⁴⁰⁸ See paragraph (f) of Rule 18a-7, as adopted.

⁴⁰⁹ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43933-35 (adopting paragraph (f) of Rule 18a-4).

⁴¹⁰ See paragraph (f)(2)(ii) of Rule 18a-7, as adopted.

copy of the notification sent to the Commission. If the accountant does not receive the copy of the notification within one business day, or if the accountant disagrees with the statements in the notification, the accountant must notify the Commission and the broker-dealer's DEA within one business day.⁴¹¹ Broker-dealer SBSBs, OTCDD/SBSBs, and broker-dealer MSBSBs will be subject to these requirements.

The Commission proposed parallel notification requirements in Rule 18a-7 for stand-alone SBSBs and MSBSBs and their independent public accountants.⁴¹² The proposed notification requirements for stand-alone SBSBs would be triggered if the independent public accountant discovers the firm is not in compliance with the proposed SBSB capital, segregation, or security-count rules or that a material weakness exists. The proposed notification requirements for stand-alone MSBSBs would be triggered if the independent public accountant discovers the firm is not in compliance with the proposed MSBSB capital rule. The Commission received no comment on these proposed notification requirements and is adopting them with the modification that an OTCDD/SBSB will be subject to these requirements pursuant to Rule 18a-7 (rather than Rule 17a-5).⁴¹³

Reports of the Independent Public Accountant

Paragraph (i) of Rule 17a-5 prescribes requirements for the reports of the independent public accountant covering the broker-dealer's annual reports, including: (1) technical requirements; (2) required representations; (3) the opinions or conclusions to be expressed in the accountant's reports; and (4) requirements related to matters to which the accountant takes exception. Broker-dealer SBSBs, other than OTCDD/SBSBs, and broker-dealer MSBSBs will be subject to these requirements. The Commission proposed parallel requirements in Rule 18a-7 for stand-alone SBSBs and MSBSBs.⁴¹⁴ The Commission is modifying these requirements to

⁴¹¹ The Commission proposed to amend paragraph (h) of Rule 17a-5 to add references to the proposed SBSB segregation rule (Rule 18a-4) so that the notification requirements would be triggered if the accountant discovered a broker-dealer SBSB was not in compliance with that rule. As discussed above, the broker-dealer SBSB segregation requirements are being codified in Rule 15c3-3 (which is already referenced in paragraph (h) of Rule 17a-5). Therefore, these proposed amendments are not being adopted. However, the note to paragraph (h) of Rule 17a-5 refers to the "special reserve account" instead of "special account" as proposed, for internal consistency with Rules 15c3-3 and 18a-4, as adopted.

⁴¹² See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25243-44.

⁴¹³ See paragraph (g) of Rule 18a-7, as adopted.

⁴¹⁴ See also *Recordkeeping and Reporting Proposing Release*, 79 FR at 25245.

conform them to the modifications discussed above pursuant to which a stand-alone SBSB or MSBSP as well as an OTCDD/SBSB also registered as an OTC derivatives dealer may engage an independent public accountant that is not registered with the PCAOB and the accountant may use GAAS in the United States or PCAOB standards. The Commission received no other comments related to these proposed requirements regarding reports of the independent accountant and is adopting them as proposed.⁴¹⁵

Notification of Change of Fiscal Year

Paragraph (n)(1) of Rule 17a-5 requires a broker-dealer to notify the Commission and its DEA of a change of its fiscal year. Paragraph (n)(2) requires that the notice contain a detailed explanation for the reasons for the change and requires that changes in the filing period for the annual reports must be approved in writing by the broker-dealer's DEA. Broker-dealer SBSBs, other than OTCDD/SBSBs, and broker-dealer MSBSPs will be subject to these requirements. The Commission proposed a parallel notification of a change of fiscal year requirement in Rule 18a-7 for stand-alone SBSBs and MSBSPs, except that under the proposal, the Commission (rather than the DEA) must approve a change in the filing period for the annual reports.⁴¹⁶ The Commission received no comments on these proposed requirements regarding notification of a change of fiscal year and is adopting them with the modification that an OTCDD/SBSB will be subject to these requirements pursuant to Rule 18a-7 (rather than Rule 17a-5).⁴¹⁷

Filing Requirements

Paragraph (o) of Rule 17a-5 provides that a filing pursuant to the rule is deemed to be accomplished when it is received by the Commission's principal office with duplicates filed simultaneously at the locations prescribed in particular paragraphs of Rule 17a-5. Broker-dealer SBSBs, other than OTCDD/SBSBs, and

⁴¹⁵ See paragraph (h) of Rule 18a-7, as adopted.

⁴¹⁶ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25245.

⁴¹⁷ See paragraph (i) of Rule 18a-7, as adopted. As proposed, these requirements were in paragraph (j) of Rule 18a-7. Paragraph (i) of the rule contained a provision under which the Commission could grant extensions and exemptions from the filing requirements in the rule. On further consideration, the Commission believes this provision is unnecessary and is not adopting it. No commenters addressed it.

broker-dealer MSBSPs will be subject to this requirement. The Commission proposed a parallel filing requirement in proposed Rule 18a-7 for stand-alone and bank SBSBs and MSBSPs.⁴¹⁸ The Commission received no comment on these proposed filing requirements and is adopting them with the modification that an OTCDD/SBSB will be subject to these requirements pursuant to Rule 18a-7 (rather than Rule 17a-5).⁴¹⁹

b. Additional Amendments to Rule 17a-5 and Modifications to Rule 18a-7

The Commission proposed several amendments to Rule 17a-5 to eliminate obsolete text, improve readability, and to modernize terminology.⁴²⁰ The Commission also proposed to redesignate certain paragraphs in Rule 17a-5 as a consequence of the proposal to delete other paragraphs in Rule 17a-5. The Commission received no comment on these amendments or redesignations and is adopting them as substantially as proposed.⁴²¹

The Commission proposed amending paragraph (a)(4) of Rule 17a-5 to specify that a DEA “must promptly transmit that information” obtained through the filing of Form Custody, instead of merely requiring that the DEA “transmit the information” obtained through the Form Custody filing.⁴²² The Commission received no comment on this amendment and is adopting it as proposed. The Commission also proposed

⁴¹⁸ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25245.

⁴¹⁹ See paragraph (j) of Rule 18a-7, as adopted. As proposed, this requirement was in paragraph (k) of Rule 18a-7, but for the reasons discussed above it is being adopted in paragraph (j).

⁴²⁰ See also *Recordkeeping and Reporting Proposing Release*, 79 FR at 25246.

⁴²¹ In addition to the differences discussed above between Rule 17a-5, as proposed to be amended, and Rule 17a-5, as amended, the Commission is adopting the following non-substantive changes to Rule 17a-5: (1) replacing “Each broker or dealer that computes certain of its capital charges in accordance with” with “Broker-dealers that have been authorized by the Commission to compute net capital pursuant to” to clarify in paragraph (a)(5) that ANC broker-dealers must file additional reports “with the Commission”; (2) replacing “VaR” with “value at risk” in paragraph (a)(5)(ii) for consistency with paragraph (a)(3)(ii) of Rule 18a-6, as adopted; (3) replacing “broker or dealer’s” with “broker’s or dealer’s” in paragraphs (a)(5)(v)(D)-(G); (4) adding “within 17 business days after the end of the month” in paragraph (a)(5)(vi) for clarity regarding the timing of the risk reports and consistency with paragraph (a)(3)(vi) of Rule 18a-6, as adopted; (5) replacing “from” with “after” in paragraph (c)(3) for consistency with paragraph (b)(2) of Rule 18a-7, as adopted; (6) adding “to” after the phrase “the broker or dealer is not subject” in paragraph (d)(1)(i)(B)(2) for internal consistency; (7) removing “as applicable, including” and adding “Information Relating to the” after the phrases “Possession or Control” in paragraph (d)(2)(ii) for clarity and consistency with 17 CFR 240.17a-5(d)(2)(ii); (8) replacing references to § 240.18a-4(c) with § 240.15c3-3(p)(3) in paragraphs (d)(3)(i)(A)(4) and (5), (d)(3)(i)(C), and (d)(3)(iii); (9) adding “identified” to paragraph (d)(3)(i)(B) for consistency with paragraph (c)(3)(i)(B) Rule 18a-7, as adopted; (10) removing references to “members” as a distinct class of registrant in addition to a “broker” or “dealer” in paragraph (e)(3) of Rule 17a-5; and (11) for internal consistency, the phrase “shall fail” is replaced with “fails” in the note to paragraph (h).

⁴²² See also *Recordkeeping and Reporting Proposing Release*, 79 FR at 25246.

changes to the structuring of paragraph (a)(5) of Rule 17a-5, which requires certain ANC reports to be filed.⁴²³

The Commission received no comment on this reorganization and is adopting it as proposed.

The Commission also made additional modifications to the text of Rule 18a-7 as proposed.⁴²⁴

C. Notification

1. Introduction

After considering the anticipated business activities of SBSs and MSBSs, the Commission proposed

⁴²³ See paragraph (a)(5) of Rule 17a-5, as proposed to be amended. See also *Recordkeeping and Reporting Proposing Release*, 79 FR at 25246-47.

⁴²⁴ In particular, the Commission is adopting the following non-substantive modifications to proposed Rule 18a-7: (1) replacing “must file an executed Part II of Form X-17A-5 (§ 249.617 of this chapter) with the Commission or its designee” with “must file with the Commission or its designee Part II of Form X-17A-5 (§ 249.617 of this chapter)” in paragraph (a)(1) for consistency with paragraph (a)(1)(ii) of Rule 17a-5, as amended; (2) replacing “must file an executed Part IIC of Form X-17A-5 (§ 249.617 of this chapter) with the Commission or its designee” with “must file with the Commission or its designee Part IIC of Form X-17A-5 (§ 249.617 of this chapter)” in paragraph (a)(2) for consistency with paragraph (a)(1)(ii) of Rule 17a-5, as amended; (3) adding “additional reports with the Commission” at the end of paragraph (a)(3) for clarity; (4) adding “in the format described in the application” before the phrase “within 17 business days after the end of the month” in paragraph (a)(3)(vi) for consistency with paragraph (a)(5)(vi) of Rule 17a-5, as amended; (5) removing “,” after “VaR” in paragraph (a)(3)(ix) for consistency with paragraph (a)(5)(ix) of Rule 17a-5, as amended; (6) removing the phrase “required by § 240.18a-7(d)” from paragraph (b)(2)(v) to eliminate an incorrect cross-reference to this paragraph; (6) removing “a model approved pursuant to” after the phrase “in accordance with” in paragraph (a)(3)(i) for consistency with paragraph (a)(5)(i) of Rule 17a-5; (7) removing “otherwise” from paragraph (c)(1)(i) for consistency with paragraph (d)(1)(i)(B)(I) of Rule 17a-5, as amended; (8) replacing “request for a change should” with “request for a change must” in paragraph (c)(1)(ii) for clarity; (9) replacing “is not required to” with “need not” in paragraph (c)(1)(iii) for consistency with paragraph (d)(1)(iii) of Rule 17a-5, as amended; (10) removing “including” before the phrase “a Computation of Net Capital” in paragraph (c)(2)(ii) for clarity; (11) adding “Information Relating to the” before the phrase “Possession or Control” in paragraph (c)(2)(ii) for consistency with of 17 CFR 240.17a-5(d)(2)(ii); (12) replacing “filed pursuant to paragraph (a) of this section, a reconciliation, including appropriate explanations, between the computation in the financial report and the computation in the most recently filed report, or if no material differences exist, a statement so indicating must be included in the financial report.” with “filed by the registrant pursuant to paragraph (a) of this section, a reconciliation, including appropriate explanations, between the computation in the financial report and the computation in the most recent Part II of Form X-17A-5 filed by the registrant. If no material differences exist, a statement so indicating must be included in the financial report.” in paragraph (c)(2)(iii) for consistency with paragraph (d)(2)(iii) of Rule 17a-5, as amended; (13) adding “as of the end of the most recent fiscal year; and” to the end of paragraph (c)(3)(i)(A)(4) for consistency with paragraph (d)(3)(i)(A)(4) of Rule 17a-5, as amended; (14) replacing “The information used to assert compliance with §§ 240.18a-1 and 240.18a-4(c) was derived from the books and records of the security-based swap dealer; and” with “The information the security-based swap dealer used to state whether it was in compliance with §§ 240.18a-1, 240.18a-4(c), and, if 240.18a-4(c) was derived from the books and records of the security-based swap dealer.” in paragraph (c)(3)(i)(A)(5) for consistency with paragraph (d)(3)(i)(A)(5) of Rule 17a-5, as amended; (15) replacing “60” with “sixty (60)” in paragraph (c)(5) for consistency with paragraph (d)(5) of Rule 17a-5, as amended; (16) removing “(d)(2)” from the third sentence of paragraph (d)(2) for consistency with paragraph (e)(3) of Rule 17a-5, as amended; (17) replacing “of this chapter. In addition, the accountant” with “of this chapter, and the independent public accountant” in paragraph (e)(1) for consistency with paragraph (f)(1) of Rule 17a-5, as amended; (18) replacing “Such statement must” with “The statement must” in paragraph (e)(2) for consistency with paragraph (f)(2) of Rule 17a-5, as amended; (19) replacing “a notice which must” with “a notice that must” in paragraph (e)(3) for consistency with paragraph (f)(3) of Rule 17a-5, as amended; (20) adding “,” after “§ 240.18a-8” in the second sentence of paragraph (g)(1) for consistency with paragraph (h) of Rule 17a-5, as amended; and (21) removing “and” at the end of paragraph (h)(3)(i) for consistency with paragraph (i)(3)(i) of Rule 17a-5, as amended.

a notification program for these registrants under Sections 15F and 17(a) of the Exchange Act modeled on the notification program for broker-dealers codified in Rule 17a-11. Rule 17a-11 specifies the circumstances under which a broker-dealer must notify the Commission and other regulators about its financial or operational condition, as well as the form of the notice. Rule 17a-11 is being amended to account for the security-based swap activities of entities subject to its requirements and new Rule 18a-8 – which is modeled on Rule 17a-11 – is being adopted to establish reporting requirements for SBSDs and MSBSPs that will not be subject to Rule 17a-11. Rule 18a-8 does not include a parallel requirement for every requirement in Rule 17a-11.⁴²⁵

As is the case with Rules 17a-5 and 18a-7, the applicability of Rule 17a-11 or 18a-8 will depend on whether the firm is subject to the capital requirements of Rule 15c3-1 (in which case Rule 17a-5 will apply), is subject to the capital requirements of Rules 18a-1 or 18a-2 (in which case Rule 18a-7 will apply), or has a prudential regulator (in which case Rule 18a-7 will apply).⁴²⁶ Therefore, a stand-alone broker-dealer, including a stand-alone OTC derivatives dealer, (which is subject to Rule 15c3-1) will continue to be subject to Rule 17a-11. Similarly, a broker-dealer SBSD, other than an OTCDD/SBSD, (which is subject to Rule 15c3-1) will be subject to Rule 17a-11. A broker-dealer, including an OTC derivatives dealer, that is also an MSBSP (which is subject to Rule 15c3-1), will be subject to Rule 17a-11. A stand-alone SBSD (which is subject to Rule 18a-1) will be subject to Rule 18a-8. Similarly, an OTCDD/SBSD (which is subject to Rule 18a-1) will be subject to Rule 18a-8.⁴²⁷ A stand-alone MSBSP (which is subject to Rule 18a-2) will be subject to Rule 18a-8. Finally, a bank SBSD or MSBSP (which has a prudential regulator) will be subject to Rule 18a-8.⁴²⁸

⁴²⁵ The Commission did not propose to include certain Rule 17a-11 notification requirements in Rule 18a-8 because they are not relevant to stand-alone and bank SBSDs and MSBSPs. *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25247, n. 773.

⁴²⁶ The undesignated introductory paragraphs to Rules 17a-11 and 18a-8 have been modified to clarify this application of the rules.

⁴²⁷ An OTCDD/SBSD is subject to Rules 17a-3, 17a-4, 17a-13, 18a-1, 18a-4, 18a-7, and 18a-8 rather than Rules 18a-5, 18a-6, 18a-9, 15c3-1, 15c3-3, 17a-5, and 17a-11, respectively. As a result, the Commission has made a conforming modification to Rule 18a-8. In particular, where Rule 18a-8 refers to Rule 18a-5, the Commission has added the following reference to Rule 17a-3: “or § 240.17a-3, as applicable.”

⁴²⁸ The notification requirements for bank SBSDs and MSBSPs are substantially narrower in scope than the notification requirements for broker-dealer and stand-alone SBSDs and MSBSPs.

2. Amendments to Rule 17a-11 and New Rule 18a-8

Undesignated Introductory Paragraph

The Commission proposed that an undesignated introductory paragraph be added to Rule 17a-11, explaining that the rule applies to a broker-dealer, including a broker-dealer SBSB or MSBSP.⁴²⁹ Further, the Commission proposed to delete paragraph (a) of Rule 17a-11, which provides that the rule shall apply to every broker-dealer registered pursuant to Section 15 of the Exchange Act. This text would be redundant given the proposed undesignated introductory paragraph. Similarly, the Commission proposed that Rule 18a-8 have an undesignated introductory paragraph explaining that the rule applies to an SBSB or MSBSP that is not registered as a broker-dealer.⁴³⁰ The note further explained that a broker-dealer that is dually registered as an SBSB or MSBSP is subject to the notification requirements under Rule 17a-11. The Commission received no comments on the introductory paragraphs but, as discussed above, is modifying them to clarify which rule (17a-11 or 18a-8) applies to a given type of entity.

Failure to Meet Minimum Capital Requirements

Rule 17a-11 requires a broker-dealer to notify the Commission if the firm discovers or is informed by the Commission or its DEA that its net capital has declined below the minimum amount required under Rule 15c3-1.⁴³¹ Further, a broker-dealer registered as an OTC derivatives dealer also must provide notice if its tentative net capital falls below the minimum amount required under Rule 15c3-1. Broker-dealer SBSBs, other than OTCDD/SBSBs, and broker-dealer MSBSPs will be subject to these existing notification requirements, as applicable. The Commission proposed parallel capital notification requirements in Rule 18a-8 for stand-alone SBSBs and MSBSPs.⁴³² The Commission received no comment on these notification provisions and has

⁴²⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25247-48.

⁴³⁰ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25247-48.

⁴³¹ See paragraph (a) of Rule 17a-11, as amended.

⁴³² See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25248.

adopted the capital rules for nonbank SBSBs and MSBSPs.⁴³³ The Commission is adopting the failure to meet minimum capital requirements notification provisions as proposed with the modification that an OTCDD/SBSB will be subject to these requirements pursuant to Rule 18a-7 (rather than Rule 17a-5).⁴³⁴

Early Warning of Potential Capital or Model Problem

Rule 17a-11 specifies five events that trigger a requirement that a broker-dealer send notice promptly (within twenty-four hours) to the Commission.⁴³⁵ These notices are designed to provide the Commission with “early warning” that the broker-dealer may experience financial difficulty.⁴³⁶ Broker-dealer SBSBs, other than OTCDD/SBSBs, and broker-dealer MSBSPs will be required to comply with these existing notification requirements. The Commission proposed parallel early warning notification requirements in Rule 18a-8 for stand-alone SBSBs and MSBSPs.⁴³⁷ The Commission received no comment on these early warning provisions and is adopting them with the modification that an OTCDD/SBSB will be subject to these requirements pursuant to Rule 18a-7 (rather than Rule 17a-5).⁴³⁸

Notice of Adjustment of Reported Capital Category

Prudential regulators have established five capital categories that are used to describe a bank’s capital strength: well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized.⁴³⁹ The definition of each capital category is based on capital measures under the bank capital standard and other factors.⁴⁴⁰ A bank is required to notify its appropriate prudential regulator of adjustments to

⁴³³ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43879-908.

⁴³⁴ See paragraphs (a)(1)(i) and (ii) and (a)(2) of Rule 18a-8, as adopted.

⁴³⁵ See paragraph (b) of Rule 17a-11, as amended.

⁴³⁶ The Commission proposed a new notification requirement applicable to broker-dealer MSBSPs that would require a broker-dealer MSBSP to notify the Commission when its level of tangible net worth falls below \$20 million. Rule 18a-2, as adopted, does not apply to broker-dealer MSBSPs. Accordingly, the Commission is not adopting this requirement.

⁴³⁷ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25248-49.

⁴³⁸ See paragraphs (b)(1) through (4) of Rule 18a-8, as adopted. In addition, the Commission is making the following non-substantive change to paragraph (b) of Rule 17a-11, as adopted: replacing “paragraph (b)(1), (b)(2), (b)(3) or (b)(4)” with “paragraph (b)(1), (2), (3), (4), or (5)” to correct an inadvertent omission.

⁴³⁹ See 12 CFR 325.103; 12 CFR 6.4; 12 CFR 208.43.

⁴⁴⁰ See *id.*

the bank's capital category that would put the bank into a lower capital category from the category previously assigned to it. Following the notice, the prudential regulator determines whether the bank needs to adjust its capital category.⁴⁴¹ The Commission proposed to include a notification requirement in Rule 18a-8 that requires a bank SBSB to give notice to the Commission when it files an adjustment of reported capital category with its prudential regulator by transmitting a copy of the notice to the Commission.⁴⁴² The Commission received no comment on this provision and for the reasons discussed in the proposing release is adopting it as proposed.⁴⁴³

Failure to Make and Keep Current Books and Records

Rule 17a-11 requires a broker-dealer that fails to make and keep current the books and records required under Rule 17a-3 to notify the Commission of this fact on the same day that the failure arises.⁴⁴⁴ In addition, a broker-dealer is required to report to the Commission within forty-eight hours of the original notice a report stating what the broker or dealer has done or is doing to correct the situation. Broker-dealer SBSBs, other than OTCDD/SBSBs, and broker-dealer MSBSPs will be required to comply with these existing notification requirements. The Commission proposed a parallel books and records notification requirement in Rule 18a-8 for stand-alone and bank SBSBs and MSBSPs.⁴⁴⁵ The Commission received no comment on this provision and is adopting it with the modification that an OTCDD/SBSB will be subject to these requirements pursuant to Rule 18a-7 (rather than Rule 17a-5).⁴⁴⁶

Material Weakness

Rule 17a-11 requires a broker-dealer to provide notification about a *material weakness* as that term is defined in Rule 17a-5.⁴⁴⁷ Specifically, the rule provides that, whenever a broker-dealer discovers or is notified

⁴⁴¹ See 12 CFR 6.3(c); 12 CFR 208.42(c); 12 CFR 325.102(c).

⁴⁴² See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25249.

⁴⁴³ See paragraph (c) of Rule 18a-8, as adopted.

⁴⁴⁴ See paragraph (c) of Rule 17a-11, as amended.

⁴⁴⁵ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25249-50.

⁴⁴⁶ See paragraph (d) of Rule 18a-8, as adopted.

⁴⁴⁷ See paragraph (d) of Rule 17a-11, as amended (defining "material weakness").

by an independent public accountant of a material weakness as defined in Rule 17a-5, the broker-dealer must: (1) give notice to the Commission within twenty-four hours of the discovery or notification of the material weakness; and (2) transmit a report within forty-eight hours of the notice stating what the broker-dealer has done or is doing to correct the situation. Broker-dealer SBSBs, other than OTCDD/MSPSPs, and broker-dealer MSBSPs will be required to comply with these existing notification requirements. The Commission proposed a parallel material weakness notification requirement in Rule 18a-8 applicable to stand-alone SBSBs.⁴⁴⁸ The Commission received no comment on this provision and is adopting it with the modification that an OTCDD/SBSB will be subject to these requirements pursuant to Rule 18a-7 (rather than Rule 17a-5).⁴⁴⁹

Insufficient Liquidity Reserve

The Commission proposed that broker-dealers (including broker-dealer SBSBs) and stand-alone SBSBs authorized to use internal models to compute net capital be subject to liquidity stress test requirements.⁴⁵⁰ Consequently, the Commission proposed that these types of broker-dealers and stand-alone SBSBs give immediate notice in writing if the liquidity stress test indicates that the amount of the firm's liquidity reserve is insufficient.⁴⁵¹ As consideration of the proposed liquidity stress test requirements is being deferred,⁴⁵² the Commission is deferring consideration of these related notification requirements.⁴⁵³

Failure to Make a Required Reserve Deposit

Paragraph (i) of Rule 15c3-3 requires a broker-dealer to notify the Commission and its DEA if it fails to make a required deposit into its customer reserve account under Rule 15c3-3. Since a broker-dealer SBSB was required to maintain a separate reserve account for its security-based swap customers under Rule 18a-4, as

⁴⁴⁸ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25250.

⁴⁴⁹ See paragraph (e) of Rule 18a-8, as adopted.

⁴⁵⁰ *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70252-54.

⁴⁵¹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25250-51.

⁴⁵² See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43874.

⁴⁵³ See paragraph (e) of Rule 17a-11, as amended; paragraph (f) of Rule 18a-8, as adopted. The proposed notification requirements would have been set forth in these paragraphs, which instead are being designated “[Reserved].”

proposed, the Commission proposed a new notification requirement in Rule 17a-11 that would be triggered if a broker-dealer SBSB fails to make a required deposit into its special account for the exclusive benefit of security-based swap customers.⁴⁵⁴ The Commission also proposed a parallel reserve account notification requirement in Rule 18a-8 applicable to stand-alone SBSBs and bank SBSBs. The Commission received no comment on these notification provisions and has adopted security-based swap customer segregation requirements.⁴⁵⁵ The Commission is adopting the proposed notification requirements for the reasons discussed in the proposing release with certain modifications.⁴⁵⁶ In particular, the security-based swap reserve requirement applicable to broker-dealers, including broker-dealer SBSBs (other than OTCDD/SBSBs), is codified in Rule 15c3-3 and is expanded to apply to stand-alone broker-dealers engaged in security-based swap activities. Accordingly, the Commission is adopting requirements that stand-alone broker-dealers and SBSBs must provide notice if they fail to make a required security-based swap customer reserve deposit.⁴⁵⁷

Manner of Notification

Rule 17a-11 specifies how and to whom the notices and reports required by the rule must be transmitted. Broker-dealers, broker-dealer SBSBs, other than OTCDD/SBSBs, and broker-dealer MSBSPs will be required to give notice or transmit the notices and reports, including the proposed new notices, pursuant to these existing requirements.⁴⁵⁸ The Commission proposed to amend this paragraph to no longer permit notice by telegraphic transmission, and instead to only allow notice by facsimile transmission.⁴⁵⁹ The change was proposed in light

⁴⁵⁴ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25251.

⁴⁵⁵ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43930-43.

⁴⁵⁶ See paragraph (f) of Rule 17a-11, as amended; paragraph (g) of Rule 18a-8, as adopted.

⁴⁵⁷ Because the reserve requirements for broker-dealers, other than OTCDD/SBSBs, are codified in paragraph (p) of Rule 15c3-3, paragraph (f) of Rule 17a-11, as amended, refers to Rule 15c3-3 instead of Rule 18a-4. Finally, paragraph (f) of Rule 17a-11, as amended, and paragraph (g) of Rule 18a-8, as adopted, refer to the “special reserve account” instead of “special account” as proposed, for internal consistency with Rules 15c3-3 and 18a-4.

⁴⁵⁸ As discussed above, current paragraph (g) of Rule 17a-11 (containing the existing manner of notification requirements for broker-dealers) was redesignated as paragraph (h).

⁴⁵⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25251.

of the fact that telegrams are no longer widely used in the United States,⁴⁶⁰ and that Commission staff no longer receive Rule 17a-11 notices by telegram.⁴⁶¹ The Commission received no comment on this revision but believes it would be appropriate to further modernize the rule by amending it to permit the notices to be sent by email. Accordingly, the rule, as amended, provides in pertinent part that the notice section must be given or transmitted to the principal office of the Commission in Washington DC and the regional office of the Commission for the region in which the broker or dealer has its principal place of business, *or to an email address provided on the Commission's website.*⁴⁶² This modification to provide for notification by email is based on the notification provision in recently adopted Rule 18a-10 and is designed to provide a simpler and more efficient process for sending the notifications (*i.e.*, via email).⁴⁶³ Consequently, a broker-dealer will be able to transmit a notification required pursuant to Rule 17a-11 using an email address provided on the Commission's website and designated for the purpose of receiving such notifications.

The Commission proposed a parallel manner of notification requirement in Rule 18a-8.⁴⁶⁴ The Commission received no comment on this provision but is modifying Rule 18a-8 to provide that the notice must be given or transmitted to the principal office of the Commission in Washington, DC and the regional office of the Commission for the region in which the SBSB or MSBSP has its principal place of business, *or to an email address provided on the Commission's website.*⁴⁶⁵ Consequently, SBSBs and MSBSPs also will be permitted to transmit a notification required pursuant to Rule 18a-8 using an email address provided on the Commission's website and designated for the purpose of receiving such notifications.

⁴⁶⁰ See Tom Standage, *No Morse*, L.A. Times, Feb. 8, 2006, at B15 (noting that Western Union discontinued its telegram services effective January 27, 2006).

⁴⁶¹ The Commission's website provides instructions on how to send the Rule 17a-11 notifications by facsimile transmission. The instructions are available at <https://www.sec.gov/divisions/marketreg/bdnotices.htm>. Notifications sent to the Commission's headquarters pursuant to the instructions are converted to PDFs and sent to an email box that is monitored by Commission staff.

⁴⁶² See paragraph (h) of Rule 17a-11, as amended.

⁴⁶³ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43943-46 (adopting Rule 18a-10).

⁴⁶⁴ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25251.

⁴⁶⁵ See paragraph (h) of Rule 18a-8, as amended. As discussed below, the Commission is amending the email notification provision in paragraph (e) of Rule 18a-10 to align it with this modification to paragraph (h) of Rule 18a-8.

For these reasons, the Commission is adopting the manner of notification requirements with the modification discussed above and with the modification that an OTCDD/SBSD will be subject to these requirements pursuant to Rule 18a-7 (rather than Rule 17a-5).

3. Additional Amendments to Rule 17a-11 and Modifications to Rule 18a-8.

The Commission proposed several amendments to Rule 17a-11 to eliminate obsolete text, improve readability, and modernize terminology. The Commission proposed a global change to Rule 17a-11 that replaced the use of the word “shall” in the rule with the word “must” or “will” where appropriate.⁴⁶⁶ The Commission also proposed certain stylistic, corrective, and punctuation amendments to improve the readability of Rule 17a-11.⁴⁶⁷ The Commission received no comment on these amendments and is adopting them as proposed.

As a consequence of the deletion of paragraph (a), paragraphs (b) through (e) of Rule 17a-11 were redesignated paragraphs (a) through (d), respectively. Further, the Commission is adding two new notification provisions to Rule 17a-11 that are codified in paragraphs (e) and (f) of the rule, as amended. As a consequence of the deletion of paragraph (a) and the addition of the two new provisions, paragraphs (f) through (i) were redesignated paragraphs (g) through (j), respectively. Similarly, due to the addition and deletion of various paragraphs, the Commission made a global change that replaced the cross-references to “paragraph (g)” of Rule 17a-11 with “paragraph (h)” of Rule 17a-11.⁴⁶⁸ The Commission received no comment on these revisions and is adopting them as proposed.

⁴⁶⁶ The amendments would replace the word “shall” with the word “must” or “will” in the following paragraphs of Rule 17a-11, as proposed to be amended: (a)(1) and (2), (b), (c), (g), (h), and (j). *See* Rule 17a-11, as proposed to be amended.

⁴⁶⁷ The Commission proposed the following stylistic and corrective changes to Rule 17a-11: (1) replacing the phrase “this § 240.17a-11” with the phrase “this section” in paragraph (a)(1); (2) replacing the phrase “Every broker or dealer who” with the phrase “Every broker or dealer that” in paragraph (c); (3) replacing the phrase “such discovery or notification of the material inadequacy or the material weakness” with the phrase “the discovery or notification of the material inadequacy or material weakness” in paragraph (d)(1); and (4) removing the U.S.C. citations from paragraph (j) since the rule already cites to the applicable section of the Exchange Act.

⁴⁶⁸ The amendments replace the phrase “paragraph (g)” with the phrase “paragraph (h)” in the following paragraphs of Rule 17a-11, as amended: (a)(1), (b), (c), (d)(1) and (2), and (g). *See* Rule 17a-11, as amended.

Prior to these amendments, paragraph (f) of Rule 17a-11 made reference to a “member” of a national securities exchange as a distinct class of registrant in addition to a “broker” and “dealer.” The Commission proposed to remove this reference to a “member” given that the rule applies to broker-dealers, which would include a member of a national securities exchange that is a broker-dealer (and as discussed above, proposed to redesignate paragraph (f) as paragraph (g)).⁴⁶⁹ The Commission received no comment on this revision and is adopting it as proposed.

Prior to these amendments, paragraph (f) of Rule 17a-11 contained a reference to the notices required under “paragraphs (b), (c), (d), or (e)” of Rule 17a-11. The Commission proposed to replace the quoted language with a reference to “this section” (and as discussed above, proposed to redesignate paragraph (f) as paragraph (g)).⁴⁷⁰ The proposed change incorporated all the notices required under Rule 17a-11, including notices that are required under the new security-based swap customer reserve account notification requirement. The Commission received no comment on this revision and is adopting it as proposed.⁴⁷¹

Finally, prior to these amendments, paragraph (h) contained references to “§ 240.15c3 1(a)(6)(iv)(B), § 240.15c3 1(a)(6)(v), § 240.15c3 1(a)(7)(ii), § 240.15c3 1(c)(2)(x)(B)(1), § 240.15c3 1(e), § 240.15c3 1d(c)(2), § 240.15c3 3(i), § 240.17a 5(h)(2), and § 240.17a 12(f)(2).” The Commission proposed amending the references to state, “§ 240.15c3-1, § 240.15c3-1d, § 240.15c3-3, § 240.17a-5, and § 240.17a-12.”⁴⁷² This amendment corrected certain cross-references that are outdated due to the recently adopted amendments to some of these rules.⁴⁷³ It also eliminated cross-references to specific paragraphs in the event of future amendments to these cross-referenced rules. The Commission received no comment on this amendment and is adopting it as proposed.⁴⁷⁴

⁴⁶⁹ See paragraph (g) of Rule 17a-11, as proposed to be amended.

⁴⁷⁰ See paragraph (g) of Rule 17a-11, as proposed to be amended.

⁴⁷¹ See paragraph (g) of Rule 17a-11, as amended.

⁴⁷² See paragraph (i) of Rule 17a-11, as proposed to be amended.

⁴⁷³ See *Broker-Dealer Reports*, 78 FR 51910; *Financial Responsibility Rules for Broker-Dealers*, 78 FR 51824.

⁴⁷⁴ See paragraph (i) of Rule 17a-11, as amended.

The Commission also made certain non-substantive modifications to Rule 18a-8.⁴⁷⁵

D. Quarterly Securities Count and Capital Charge for Unresolved Securities Differences

1. Introduction

The Commission proposed a securities count program for stand-alone SBSBs under Section 15F of the Exchange Act that is modeled on the securities count program for broker-dealers codified in Rule 17a-13.⁴⁷⁶ Rule 17a-13 requires certain broker-dealers (generally, broker-dealers that hold customer funds and securities) to examine and count the securities they physically hold, account for the securities that are subject to their control or direction but are not in their physical possession, verify the locations of securities under certain circumstances, and compare the results of the count and verification with their records. Broker-dealer SBSBs, including OTCDD/SBSBs, and broker-dealer MSBSPs will be subject to Rule 17a-13.⁴⁷⁷ Consequently, they must comply with the existing securities count requirements in the rule with respect to security-based swaps.

Stand-alone SBSBs will be subject to Rule 18a-9, which is modeled on Rule 17a-13. Rule 18a-9 does not include a parallel requirement for every requirement in Rule 17a-13.⁴⁷⁸ In addition, Rule 18a-9 does not apply to stand-alone MSBSPs because the customer protection rationale for Rule 17a-13 and Rule 18a-9 is not as pertinent to stand-alone MSBSPs. For example, the Commission does not anticipate that stand-alone

⁴⁷⁵ The non-substantive modifications to Rule 18a-8, as adopted, are: (1) adding “of such deficiency” after the phrase “must give notice” in paragraph (a)(1)(i) and (ii) and (a)(2) for consistency with paragraph (a)(1) of Rule 17a-11, as amended; (2) removing “as appropriate” after the phrase “its current amount of tentative net capital” in paragraph (a)(1)(ii) for clarity; (3) adding a “,” after the phrase “with paragraph (h) of this section” in paragraph (e)(2) for consistency with paragraph (d)(2) of Rule 17a-11, as amended; and (4) adding “for which there is no prudential regulator” after the phrase “If a security-based swap dealer” in paragraph (g) for clarity.

⁴⁷⁶ *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25252-54.

⁴⁷⁷ The undesignated introductory paragraph to Rule 18a-9 has been modified to clarify this application of the rules. The Dodd-Frank Act amended the definition of “security” in Section 3(a)(10) of the Exchange Act to include a security-based swap. Therefore, each reference in Rule 17a-13 to a security in the Exchange Act includes a security-based swap. The Commission, however, has issued temporary exemptive relief excluding security-based swaps from the definition of security to the extent Commission rules did not otherwise apply specifically to security-based swaps prior to the amendment. *See* section III.C. of this release.

⁴⁷⁸ The Commission is not including in Rule 18a-9, as adopted, provisions that would parallel the provisions in paragraphs (a)(1), (2), and (3) and (e) of Rule 17a-13. These paragraphs of Rule 17a-13 provide exemptions from complying with Rule 17a-13 for certain types of broker-dealers. The Commission believes that SBSBs will not limit their activities to the types of activities in which the exempt broker-dealers engage.

MSBSPs will engage in securities operations involving the movement of funds and securities from buyer to seller that are as complex as the operations of dealers in securities such as broker-dealers and SBSBs.

2. Rule 18a-9

Undesignated Introductory Paragraph

The Commission proposed that Rule 18a-9 have an undesignated introductory paragraph explaining that the rule applies only to a stand-alone SBSB.⁴⁷⁹ The note further explained that a broker-dealer, including a broker-dealer SBSB, is subject to the securities count requirements under Rule 17a-13.⁴⁸⁰ The Commission received no comments on this proposed introductory paragraph and is adopting it with modifications to clarify which rule (17a-13 or 18a-9) applies to a given type of entity.⁴⁸¹

Requirement to Perform a Securities Count

Paragraph (b) of Rule 17a-13 requires a quarterly securities count and specifies the steps a broker-dealer must take in performing the count. In general terms, the rule requires a broker-dealer to physically examine, count, and verify all securities positions (*e.g.*, equities, corporate bonds, and government securities, and, after the Commission's exemptive relief expires,⁴⁸² security-based swaps), and to compare the results of the count and verification with the firm's records at least once each calendar quarter. A securities count difference results when the count reflects positions different than those reflected in the firm's books and records.

The Commission proposed parallel securities count requirements in Rule 18a-9 that mirrored the requirements in paragraph (b) of Rule 17a-13.⁴⁸³ Consequently, a stand-alone SBSB would be required to perform a securities count each quarter following steps that are identical to the steps specified in paragraph (b)

⁴⁷⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25253.

⁴⁸⁰ See *id.*

⁴⁸¹ See undesignated introductory paragraph of Rule 18a-9, as adopted.

⁴⁸² See section III.C. of this release.

⁴⁸³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25253-54.

of Rule 17a-13.⁴⁸⁴ Moreover, a securities count needed to be performed no sooner than two months after the last count and no later than four months after the last count.⁴⁸⁵

Stand-alone SBSBs may have limited activities. The Commission believes, however, that stand-alone SBSBs will likely hold securities in a proprietary capacity and as hedges or collateral related to their swaps activity, and therefore are susceptible to the same risks as broker-dealers if securities are not counted and verified. This is the same reason that OTC derivatives dealers are not exempt from performing quarterly securities counts even though they also conduct a more limited business than traditional broker-dealers.

The Commission acknowledges that security-based swaps are not held in depositories or at other types of custodians. Instead, they are documented in contractual agreements. In order to meet the requirements of Rules 17a-13 and 18a-9, as applicable, a broker-dealer and SBSB generally will need to account for or verify its open security-based swap transactions. The method of doing so could involve steps to confirm open transactions reflected in the firm's books and records with securities clearing agencies or counterparties. The Commission is adopting this requirement as proposed.⁴⁸⁶

Date of the Count

Paragraph (c) of Rule 17a-13 provides that: (1) the examination, count, verification, and comparison may be made either as of a date certain or on a cyclical basis covering the entire list of securities; (2) in either case the recordation of unresolved differences shall be effected within seven business days subsequent to the examination, count, verification, and comparison of a particular security; (3) in the event that an examination, count, verification, and comparison is made on a cyclical basis, it shall not extend over more than one calendar quarter-year; and (4) no security shall be examined, counted, verified, or compared for the purpose of the rule less than two months or more than four months after a prior examination, count, verification, and comparison. This permits a broker-dealer to perform the securities count on a rolling basis throughout the quarter as opposed

⁴⁸⁴ See paragraph (a) of Rule 18a-9, as proposed to be adopted.

⁴⁸⁵ See *id.*

⁴⁸⁶ See paragraph (a) of Rule 18a-9, as adopted.

to performing it all at once.⁴⁸⁷ The Commission proposed a parallel securities count requirement in Rule 18a-8.⁴⁸⁸ Consequently, a stand-alone SBSB could perform the securities count as of a date certain or on a cyclical basis subject to conditions that are identical to the conditions in paragraph (c) of Rule 17a-13. The Commission received no comment on this provision and is adopting it as proposed.⁴⁸⁹

Separation of Duties

Paragraph (d) of Rule 17a-13 provides that the examination, count, verification, and comparison shall be made or supervised by persons whose regular duties do not require them to have direct responsibility for the proper care and protection of the securities or the making or preservation of the subject records. Thus, the rule requires a separation of duties as a control to promote the integrity of the securities count process. The Commission proposed a parallel separation of duties requirement in Rule 18a-9 that mirrored the requirement in paragraph (d) of Rule 17a-13.⁴⁹⁰ Consequently, a stand-alone SBSB was required to assign responsibility for making or supervising the count to individuals whose regular duties do not require them to have direct responsibility for the proper care and protection of the securities or the making or preservation of the subject records.⁴⁹¹ The Commission received no comment on this provision and is adopting it as proposed.⁴⁹²

E. Alternative Compliance Mechanisms

A commenter urged the Commission to harmonize its recordkeeping requirements for SBSBs and MSBSPs with the CFTC's final recordkeeping requirements for swap dealers and major swap participants to the maximum extent possible with the goal of permitting firms to utilize a single recordkeeping system for

⁴⁸⁷ For example, on day one the broker-dealer could perform the count with respect to securities of ABC Corporation, on day two the broker-dealer could perform the count with respect to securities of DEF Corporation, and on day three the broker-dealer could perform the count with respect to securities of GHI Corporation.

⁴⁸⁸ *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25254.

⁴⁸⁹ *See* paragraph (b) of Rule 18a-9, as adopted.

⁴⁹⁰ *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25254.

⁴⁹¹ *See* paragraph (c) of Rule 18a-9, as proposed to be adopted.

⁴⁹² *See* paragraph (c) of Rule 18a-9, as adopted. Paragraph (d) of Rule 18a-9, as proposed to be adopted, would have mirrored paragraph (f) of Rule 17a-13, but the Commission is not adopting that provision.

security-based swaps and swaps.⁴⁹³ In response to the comment and to promote harmonization with CFTC requirements, the Commission – as discussed below – is adopting a limited alternative compliance mechanism in Rules 17a-3 and 18a-5 and amending Rule 18a-10 to add recordkeeping and reporting requirements to the full alternative compliance mechanism provided by that rule.⁴⁹⁴

1. Limited Alternative Compliance Mechanism - Rules 17a-3 and 18a-5

Under the limited alternative compliance mechanism, an SBS or MSBSP may comply with the recordkeeping requirements of the CEA and the rules thereunder applicable to swap dealers and major swap participants in lieu of complying with the requirements in Rules 17a-3 and 18a-5 to make and keep current trade blotters, customer account ledgers, and stock records solely with respect to information required to be included in these records regarding security-based swap transactions and positions if the SBS or MSBSP:

- is registered as an SBS or MSBSP pursuant to Section 15F of the Exchange Act;
- is registered as a swap dealer or major swap participant pursuant to section 4s of the Commodity Exchange Act and the rules thereunder;
- is subject to 17 CFR 23.201-202, 17 CFR 23.402, and 17 CFR 23.501 (the “CFTC’s Books and Records Rules”) with respect to its swap-related books and records;
- preserves all of the data elements necessary to create the records required by paragraphs (a)(1), (3), and (5) of Rule 17a-3; paragraphs (a)(1), (3), and (4) of Rule 18a-5; or paragraphs (b)(1) through (3) of Rule 18a-5, as applicable, as they pertain to security-based swap and swap transactions and positions;
- upon request furnishes promptly to representatives of the Commission the records required by paragraphs (a)(1), (3), and (5) of Rule 17a-3; paragraphs (a)(1), (3), and (4) of Rule 18a-5; or paragraphs (b)(1) through (3) of Rule 18a-5, as applicable, as they pertain to security-based swap and swap transactions and positions, as well as the records required by the CFTC’s Books and Records Rules, as they pertain to security-based swap and swap transactions and positions, in the format applicable to that category of record as set forth in Rule 17a-3 or Rule 18a-5, as applicable; and
- provides notice of its intent to utilize the limited alternative compliance mechanism by notifying the Commission in writing, both at the principal office of the Commission in Washington, DC and at the regional office of the Commission for the region in which the registrant has its principal place of

⁴⁹³ See SIFMA 9/5/2014 Letter. See also *Recordkeeping and Reporting Proposing Release*, 79 FR at 25198, 25209 (seeking comment on whether there are provisions in the CFTC’s recordkeeping and reporting rules for swap dealers and major swap participants that the Commission should consider with respect to the rules for SBSs and MSBSPs).

⁴⁹⁴ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43943-46 (adopting Rule 18a-10, which provides an alternative compliance mechanism for certain SBSs with respect to capital, margin, and segregation requirements).

business, and, if the registrant is a broker-dealer, by notifying in writing the registrant's DEA.⁴⁹⁵

These records must be maintained for the retention period and in the manner specified for that category of record in Rule 17a-4 or 18a-6, as applicable.

The first three prongs of the limited alternative compliance mechanism identify the entities that may use it; that is, entities that are registered with the Commission as an SBSB or MSBSP and with the CFTC as a swap dealer or major swap participant and are subject to the recordkeeping requirements of the CFTC with respect to its swap-related books and records. The fourth and fifth prongs set forth the substantive requirements of the limited alternative compliance mechanism: (1) that the registrant preserve the data elements necessary to create the relevant required records as they pertain to security-based swap and swap transactions and positions, regardless of format; and (2) that the registrant provide those data elements as they pertain to security-based swap and swap transactions and positions in the format required by Commission rules upon request by a representative of the Commission. In effect, these two requirements taken together mean that a firm will not be required to create a trade blotter, customer account ledger, or stock record reflecting security-based swap transactions and positions formatted pursuant to the Commission's rules each day, but instead only when requested to do so by Commission staff. This should promote harmonization with CFTC requirements because firms will be able to create the daily records for both security-based swap and swap transactions and positions in the format required by the CFTC. For example, firms will not have to create on a daily basis two sets of trade blotters for security-based swap and swap transactions and positions: one in the Commission's required format and the other in the CFTC's required format.

The limited alternative compliance mechanism applies only to the provisions of Rules 17a-3 and 18a-5 that were specifically referenced by the commenter as appropriate for "harmonization,"⁴⁹⁶ with the exception of the general ledger requirements in paragraph (a)(2) of Rules 17a-3 and 18a-5. Consequently, the limited alternative compliance mechanism may be applied to: (1) the trade blotter requirements in paragraph (a)(1) of

⁴⁹⁵ See paragraph (b) of Rule 17a-3, as amended, and paragraph (c) of Rule 18a-5, as adopted.

⁴⁹⁶ See SIFMA 9/5/2014 Letter.

Rule 17a-3, as amended, and paragraphs (a)(1) and (b)(1) of Rule 18a-5, as adopted; (2) the customer account ledger requirements of paragraph (a)(3) of Rule 17a-3, as amended, and paragraphs (a)(3) and (b)(2) of Rule 18a-5, as adopted; and (3) the stock record requirements of paragraph (a)(5)(ii) of Rule 17a-3, as amended, and paragraphs (a)(4) and (b)(3) of Rule 18a-5, as adopted. The Commission does not believe it would be appropriate to apply the limited alternative compliance mechanism to the general ledger requirements in paragraph (a)(2) of Rules 17a-3 and 18a-5 because the information that must be recorded in a general ledger is not limited to security-based swap and swap information. In particular, the general ledger must include information reflecting *all* assets and liabilities, income and expense, and capital accounts in order to facilitate examinations of the firm's overall financial condition and solvency. The Commission believes that the substantive requirements of the remaining provisions identified by the commenter as applied to security-based swap and swap transactions and positions are sufficiently similar to their counterparts in the CFTC's Books and Records Rules to make use of the limited alternative compliance mechanism appropriate. The Commission emphasizes that the limited alternative compliance mechanism applies solely to the books and records requirements with respect to security-based swap and swap transactions and positions, and does not extend to any books and records requirements for other types of transactions and positions. For other types of transactions and positions, the SBSB or MSBSP must make and keep current a trade blotter, customer account ledger, and stock record in the format required by Rule 17a-3 or 18a-5 as applicable.

The commenter seeking harmonization with the CFTC's requirements also stated that the Commission should permit bank SBSBs and MSBSPs to satisfy the Commission's recordkeeping requirements by complying with recordkeeping rules established by their prudential regulator, stating that "[s]uch rules should be supplemented with additional requirements only to the extent that such additional obligations are necessary for the Commission to fulfill its regulatory oversight of bank SBSBs and MSBSPs."⁴⁹⁷ Based largely on its consultations with the prudential regulators regarding their recordkeeping and reporting requirements, the

⁴⁹⁷ See SIFMA 9/5/2014 Letter.

Commission believes that the final amendments and rules being adopted in this document achieve this objective by specifically addressing a bank's activities as an SBSB or an MSBSP and only those activities. In particular, the rules being adopted in this document for bank SBSBs and MSBSPs are focused solely on documenting or requiring the reporting of information relating to engaging in security-based swap activities as opposed to the more traditional banking activities addressed by prudential regulators' existing recordkeeping and reporting requirements. In addition, as discussed above in section II.B.2. of this release, the Commission is adopting a reporting form for bank SBSBs and MSBSPs (the FOCUS Report Part IIC) that elicits information that largely is drawn from the call reports banks must file with the prudential regulators. In this way, the Commission has harmonized its reporting requirements for bank SBSBs and MSBSPs with the reporting requirements of the prudential regulators.

2. Full Alternative Compliance Mechanism - Rule 18a-10

The Commission adopted the full alternative compliance mechanism in Rule 18a-10.⁴⁹⁸ Rule 18a-10 permits certain SBSBs that are registered as swap dealers and that predominantly engage in a swaps business to elect to comply with the capital, margin, and segregation requirements of the CEA and the CFTC's rules in lieu of complying with the capital, margin, and segregation requirements of Rules 18a-1, 18a-3, and 18a-4.⁴⁹⁹ The Commission is amending Rule 18a-10 in this document to permit firms that will operate under Rule 18a-10 to elect to comply with the recordkeeping and reporting requirements of the CEA and the CFTC's rules in lieu of complying with Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9.

Paragraph (a) of Rule 18a-10 sets forth the conditions that an SBSB must meet to operate under the full alternative compliance mechanism. The Commission is amending the preface of paragraph (a) to reference recordkeeping and reporting requirements of the CEA and the CFTC's rules as well as Rules 18a-5, 18a-6, 18a-

⁴⁹⁸ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43943-46.

⁴⁹⁹ The full alternative compliance mechanism of Rule 18a-10 is not available to a nonbank SBSB that is also registered as a broker-dealer, including a broker-dealer that is an OTC derivatives dealer. In theory, a bank SBSB could use the full alternative compliance mechanism of Rule 18a-10 if it met the required conditions. However, the Commission does not expect that these entities would choose to do so. See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43944 n. 707.

7, 18a-8, and 18a-9 in order to add these requirements to the full alternative compliance mechanism.⁵⁰⁰ The conditions for operating under the full alternative compliance mechanism are set forth in paragraphs (a)(1) through (5) of Rule 18a-10. Paragraphs (a)(1) through (3) of Rule 18a-10 provide that the firm must be registered with the Commission as an SBSB, must not be registered with the Commission as a broker-dealer (including an OTC derivatives dealer), and must be registered with the CFTC as a swap dealer. Paragraph (a)(4) of Rule 18a-10 provides that the SBSB must be exempt from the segregation requirements of Rule 18a-4. Paragraph (a)(5) of Rule 18a-10 provides that the aggregate gross notional amount of the firm's outstanding security-based swap positions must not exceed the lesser of two thresholds as of the most recently ended quarter of the firm's fiscal year.⁵⁰¹ The thresholds are: (1) the maximum fixed-dollar gross notional amount of open security-based swaps specified in paragraph (f) of the rule ("maximum fixed-dollar threshold"); and (2) 10% of the combined aggregate gross notional amount of the firm's open security-based swap and swap positions. The amount of the maximum fixed-dollar threshold is \$250 billion for a transitional period of three years and will then drop to \$50 billion unless the Commission, by order: (1) maintains the maximum fixed-dollar amount at \$250 billion for an additional period of time or indefinitely after the 3-year transition period ends; or (2) lowers it to an amount that is less than \$250 billion but greater than \$50 billion.⁵⁰² Other than the amendment to the preface of paragraph (a) discussed above, the Commission is not amending the conditions set forth in paragraphs (a)(1) through (5) of Rule 18a-10. In addition, the Commission is not amending paragraph (f) of Rule 18a-10 (specifying the maximum fixed-dollar threshold).

Paragraph (b) of Rule 18a-10 sets forth requirements for a firm that is operating pursuant to the rule.

Paragraph (b)(1) provides, in pertinent part, that the firm must comply with the capital, margin, and segregation

⁵⁰⁰ As amended, the preface to paragraph (a) of Rule 18a-10 provides that a security-based swap dealer may comply with capital, margin, segregation, recordkeeping, and reporting requirements of the Commodity Exchange Act and chapter I of title 17 of the Code of Federal Regulations applicable to swap dealers in lieu of complying with §§ 240.18a-1 and 240.18a-3 through 240.18a-9.

⁵⁰¹ The gross notional amount is based on the notional amounts of the firm's security-based swaps and swaps that are outstanding as of the quarter end. It is not based on transaction volume during the quarter.

⁵⁰² See paragraphs (f)(1)(i) and (ii) of Rule 18a-10, as adopted.

requirements of the CEA and the CFTC’s rules applicable to swap dealers. The Commission is amending paragraph (b)(1) to reference recordkeeping and reporting requirements of the CEA and the CFTC’s rules to add these requirements to this provision.⁵⁰³ Consequently, a firm that is subject to Rule 18a-10 must comply with applicable capital, margin, segregation, recordkeeping, and reporting requirements of the CEA and the CFTC’s rules and a failure to comply with one or more of those rules will constitute a failure to comply with Rule 18a-10.

Paragraph (b)(1) also provides, in pertinent part, that the firm must treat security-based swaps and related collateral pursuant of the CEA and the CFTC’s rules to the extent the requirements do not specifically address security-based swaps and related collateral. This provision is designed to ensure that security-based swaps and related collateral do not fall into a “regulatory gap” with respect to an SBSB operating under the full alternative compliance mechanism. Under a CFTC no-action letter, if a capital, margin, segregation, recordkeeping, or reporting requirement applicable to a swap or collateral related to a swap is silent as to a security-based swap or collateral related to a security-based swap, the nonbank SBSB must treat the security-based swap or collateral related to the security-based swap pursuant to the requirement applicable to the swap or collateral related to the swap.⁵⁰⁴

The Commission is making clarifying amendments to paragraph (b)(1) of Rule 18a-10 to provide that the firm must treat a security-based swap or collateral related to a security-based swap *as a swap or collateral related to a swap, as applicable*, if the CEA or the CFTC’s rules do not specifically address a security-based

⁵⁰³ As amended, paragraph (b)(1) of Rule 18a-10 provides that compliance with capital, margin, segregation, recordkeeping, and reporting requirements of the Commodity Exchange Act and chapter I of title 17 of the Code of Federal Regulations applicable to swap dealers and treat security-based swaps or collateral related to security-based swaps as swaps or collateral related to swaps, as applicable, pursuant to those requirements to the extent the requirements do not specifically address security-based swaps or collateral related to security-based swaps.

⁵⁰⁴ See, e.g., Letter from Eileen T. Flaherty, Director, Division of Swap Dealer and Intermediary Oversight, and Jeffrey M. Bandman, Acting Director, Division of Clearing and Risk, CFTC, to Mary P. Johannes, Senior Director, ISDA (Aug. 23, 2016) (providing no-action relief to swap dealers and major swap participants with respect to the CFTC’s margin rules for non-cleared swaps pursuant to which these entities can portfolio margin non-cleared swaps with non-cleared security-based swaps, provided, among other conditions, the security-based swaps shall be treated as if they were swaps for all applicable provisions of the CFTC’s margin rules).

swap or collateral related to a security-based swap.⁵⁰⁵

The amendments to Rule 18a-10 being adopted in this document will require a firm operating under the rule to treat security-based swaps and related collateral pursuant to the recordkeeping and reporting requirements of the CEA and the CFTC's rules as if they were swaps or related collateral to the extent those requirements do not specifically address security-based swaps and related collateral. For example, if the recordkeeping and reporting requirements of the CEA and CFTC's rules do not address a security-based swap transaction, the firm will need to treat it as a swap transaction for the purposes of the recordkeeping and reporting requirements that apply to swap transactions.

Paragraph (b)(2) of Rule 18a-10 requires the firm to provide a written disclosure to its counterparties after it begins operating pursuant to the rule. The disclosure must be provided before the first transaction with the counterparty after the firm begins operating pursuant to the rule. The disclosure must notify the counterparty that the firm is complying with the applicable capital, margin, and segregation requirements of the CEA and the CFTC's rules in lieu of complying with Rules 18a-1, 18a-3, and 18a-4. The Commission is amending paragraph (b)(2) to reference the recordkeeping and reporting requirements of the CEA and the CFTC's rules as well as Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 in order to add these requirements to the disclosure requirement.⁵⁰⁶

Paragraph (b)(3) of Rule 18a-10 requires the SBSB to immediately notify the Commission and the CFTC in writing if it fails to meet a condition in paragraph (a) of the rule. The Commission is making a non-

⁵⁰⁵ The amendments adding the recordkeeping and reporting requirements to paragraph (b)(1) and making the clarification discussed above result in the paragraph providing that compliance with capital, margin, segregation, recordkeeping, and reporting requirements of the Commodity Exchange Act and chapter I of title 17 of the Code of Federal Regulations applicable to swap dealers and treat security-based swaps or collateral related to security-based swaps as swaps or collateral related to swaps, as applicable, pursuant to those requirements to the extent the requirements do not specifically address security-based swaps or collateral related to security-based swaps.

⁵⁰⁶ As amended, paragraph (b)(2) of Rule 18a-10 provides that an SBSB must disclose in writing to each counterparty to a security-based swap before entering into the first transaction with the counterparty after the date the SBSB begins operating under this section that the SBSB is operating under this section and is therefore complying with the applicable capital, margin, segregation, recordkeeping, and reporting requirements of the Commodity Exchange Act and the rules promulgated by the Commodity Futures Trading Commission thereunder in lieu of complying with the capital, margin, segregation, recordkeeping, and reporting requirements promulgated by the Commission in §§ 240.18a-1, 240.18a-3, 240.18a-4; 240.18a-5, 240.18a-6, 240.18a-7, 240.18a-8, and 240.18a-9.

substantive amendment to paragraph (b)(3) because – as discussed next – new paragraph (b)(4) is being added to the rule.⁵⁰⁷

As discussed above in section II.C. of this release, Rule 17a-11 specifies the circumstances under which a broker-dealer must notify the Commission and other regulators about its financial or operational condition, as well as the form of the notice. Stand-alone and bank SBSBs and MSBSPs are subject to Rule 18a-8, which is modeled on Rule 17a-11. Rule 18a-8 is designed to provide the Commission with the ability to take effective proactive steps to respond when a stand-alone or bank SBSB is experiencing or likely to experience financial difficulty.⁵⁰⁸ However, an SBSB operating under Rule 18a-10 may comply with the notification requirements of the CFTC’s rules in lieu of complying with Rule 18a-8. Therefore, in order to retain a requirement that the SBSB provide notice to the Commission if it is experiencing or likely to experience financial difficulty, the Commission is adding paragraph (b)(4) to Rule 18a-10. This paragraph provides that an SBSB operating pursuant to Rule 18a-10 must simultaneously notify the Commission if the firm is required to send a notice concerning its capital, books and records, liquidity, margin operations, or segregation operations to the CFTC by transmitting to the Commission a copy of the notice being sent to the CFTC.⁵⁰⁹

In addition, as discussed in section II.A.3.a. of this release, paragraph (j) of Rule 17a-4 requires a broker-dealer to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the broker-dealer that are required to be preserved under Rule 17a-4, or any other records of the broker-dealer subject to examination under Section 17(b) of the Exchange Act that are requested by the representative of the Commission. Paragraph (g) of Rule 18a-6 prescribes a parallel prompt production requirement for stand-alone and bank SBSBs and MSBSPs. However, an SBSB operating under Rule 18a-10 may comply with the record preservation requirements of the CFTC’s rules in lieu of complying with Rule 18a-6. Therefore, in order to retain a requirement that the SBSB furnish records promptly to the Commission,

⁵⁰⁷ The non-substantive amendment removes the period at the end of the paragraph and in its place adds the text: “; and.”

⁵⁰⁸ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25247.

⁵⁰⁹ See paragraph (b)(4) of Rule 18a-10, as amended. See, e.g., 17 CFR 1.12 (CFTC) (maintenance of minimum financial requirements by futures commission merchants and introducing brokers).

paragraph (b)(5) is being added to Rule 18a-10. This paragraph provides that the SBSB must furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the SBSB that are required to be preserved under the CEA and CFTC's rules applicable to swap dealers, or any other records of the SBSB subject to examination pursuant to Section 15F of the Exchange Act that are requested by a representative of the Commission.

Paragraph (c) of Rule 18a-10 addresses the situation in which a firm fails to comply with a condition in paragraph (a) of the rule and, therefore, no longer qualifies to operate pursuant to the rule. The paragraph provides that a firm in that circumstance must begin complying with Rules 18a-1, 18a-3, and 18a-4 no later than either: (1) two months after the end of the month in which the firm failed to meet the condition in paragraph (a); or (2) after a longer period of time as granted by the Commission by order subject to any conditions imposed by the Commission. The Commission is amending the preface to paragraph (c) to reference Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 in order to add these rules to the compliance requirement.⁵¹⁰

Paragraph (d) of Rule 18a-10 addresses how a firm would elect to operate pursuant to the rule. Under paragraph (d)(1), a firm can make the election as part of the process of applying to register as an SBSB. In this case, the firm must provide written notice to the Commission and the CFTC during the registration process of its intent to operate pursuant to the rule. Upon being registered as an SBSB, the firm can begin complying with Rule 18a-10, provided it meets the conditions in paragraph (a) of the rule. Under paragraph (d)(2) of Rule 18a-10, an SBSB can make the election after the firm has been registered as an SBSB. In this case, paragraph (d)(2)(i) provides that the firm must provide written notice to the Commission and the CFTC of its intent to operate pursuant to the rule. In addition, paragraph (d)(2)(ii) provides that the firm must continue to comply with Rules 18a-1, 18a-3, and 18a-4 for two months after the end of the month in which the firm provides the notice or for a shorter period of time as granted by the Commission by order subject to any conditions imposed

⁵¹⁰ As amended, the preface to paragraph (c) of Rule 18a-10 reads: "A security-based swap dealer that fails to meet one or more of the conditions specified in paragraph (a) of this section must begin complying with §§ 240.18a-1 and 240.18a-3 through 240.18a-9 no later than:"

by the Commission. The Commission is amending the preface to paragraph (d)(2)(ii) to reference Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 in order to add these rules to the compliance requirement.⁵¹¹

As discussed above, paragraph (b)(3) requires a firm operating pursuant to the rule to immediately notify the Commission and the CFTC in writing if the SBSB fails to meet a condition in paragraph (a). Further, paragraphs (d)(1) and (2) require a firm to provide written notice to the Commission and the CFTC of its intent to operate pursuant to the rule. Paragraph (e) of Rule 18a-10 provides that the notices required by the rule must be sent by facsimile transmission to the principal office of the Commission and the regional office of the Commission for the region in which the security-based swap dealer has its principal place of business *or to an email address to be specified separately*, and to the principal office of the CFTC in a manner consistent with the notification requirements of the CFTC. The paragraph also requires that notices include a brief summary of the reason for the notice and contact information for an individual who can provide further information about the matter that is the subject of the notice (emphasis added). The Commission is amending paragraph (e) of Rule 18a-10 to provide that the notice must be sent by facsimile transmission to the principal office of the Commission and the regional office of the Commission for the region in which the security-based swap dealer has its principal place of business *or to an email address provided on the Commission's website*, and to the principal office of the CFTC in a manner consistent with the notification requirements of the CFTC. This amendment is intended to clarify the location of the email address for firms that choose to send the notice via email.

F. Cross-Border Application and Availability of Substituted Compliance

1. Cross-Border Application of Recordkeeping and Reporting Requirements

In the 2013 cross-border proposing release, the Commission preliminarily interpreted the Title VII requirements associated with registration to apply generally to the activities of registered entities.⁵¹² In reaching

⁵¹¹ As amended, paragraph (d)(2)(ii) of Rule 18a-10 provides: "Continue to comply with §§ 240.18a-1 and 240.18a-3 through 240.18a-9 for at least."

⁵¹² See *Trade Acknowledgment and Verification of Security-Based Swap Transactions*, 81 FR at 39825, n.191 (citing *Cross-Border Proposing Release*, 78 FR at 30986).

that preliminary conclusion, the Commission did not concur with the views of certain commenters that the Title VII requirements should not apply to the foreign security-based swap activities of registered entities, stating that such a view could be difficult to reconcile with, among other things, the statutory language describing the requirements applicable to SBSDs.⁵¹³ The Commission further preliminarily identified the recordkeeping and reporting requirements as entity-level requirements, rather than requirements specifically applicable to particular transactions. Entity-level requirements primarily address concerns relating to the entity as a whole, with a particular focus on safety and soundness of the entity to reduce systemic risk in the U.S. financial system. The Commission accordingly proposed to apply the entity-level requirements on a firm-wide basis to address risks to the SBSD as a whole. The Commission did not propose any exception from the application of the entity-level requirements to SBSDs.⁵¹⁴

A commenter expressed the view that requirements with respect to daily trading records and confirmations should be deemed transaction-level, on the grounds that the application and enforcement of these requirements will be addressed at the transaction level, and for consistency with the CFTC's approach.⁵¹⁵ After considering the commenter's concerns, the Commission continues to believe that the entirety of the recordkeeping and reporting requirements – including requirements addressing daily trading records and confirmations – appropriately are considered entity-level requirements.⁵¹⁶ If the Commission treated its recordkeeping requirements as transaction-based requirements, and then excluded certain transactions from its recordkeeping requirements, it would not be able to effectively regulate and examine registrants. Not only would the Commission have an incomplete picture of registrants' transactions if other jurisdictions did not require records regarding the excluded transactions, but this approach would create logistical complexities when

⁵¹³ See *Cross-Border Proposing Release*, 78 FR at 30986.

⁵¹⁴ See *Cross-Border Proposing Release*, 78 FR at 31011. The Commission similarly expressed the preliminary view that MSBSPs should be required to adhere to the entity-level requirements. See *id.* at 31035.

⁵¹⁵ See SIFMA 9/5/2014 Letter.

⁵¹⁶ The Commission also believes that treating these requirements as entity-level requirements is necessary or appropriate to help prevent the evasion of the particular provisions of the Exchange Act that were added by the Dodd-Frank Act and prophylactically will help ensure that the purposes of those provisions of the Dodd-Frank Act are not undermined.

comparing records kept in different formats. These concerns about an incomplete picture of a registrant's business are exacerbated by the possibility that a registrant would not keep records of excluded transactions because its jurisdiction does not regulate either the transaction (*e.g.*, exclusions for certain security-based swap products or for certain transactions) or the entity. For these reasons, the Commission is treating recordkeeping and reporting requirements as entity-level requirements.

2. Availability of Substituted Compliance in Connection with Recordkeeping and Reporting Requirements

a. Existing Substituted Compliance Rule

In 2013, the Commission proposed to make substituted compliance potentially available in connection with the requirements applicable to foreign SBSs pursuant to Section 15F of the Exchange Act, other than the registration requirements applicable to dealers. Because the recordkeeping and reporting requirements being adopted are grounded in Section 15F, substituted compliance generally would have been available for those requirements under the proposal.⁵¹⁷ Upon a Commission substituted compliance determination, a person would be able to satisfy relevant recordkeeping or reporting requirements by substituting compliance with corresponding requirements under a foreign regulatory system.

The Commission subsequently adopted Rule 3a71-6, which provides that substituted compliance is available with respect to the Commission's business conduct requirements, and (rather than addressing all requirements under Section 15F of the Exchange Act) reserved the issue as to whether substituted compliance also would be available in connection with other requirements under that statute.⁵¹⁸ Rule 3a71-6 was amended to make substituted compliance available with respect to the Commission's trade acknowledgment and verification requirements,⁵¹⁹ and to make it available with respect to capital and margin requirements.⁵²⁰

⁵¹⁷ See *Cross-Border Proposing Release*, 78 FR at 30968, 31085.

⁵¹⁸ See *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR 29960. See also *Cross-Border Proposing Release*, 78 FR at 31207.

⁵¹⁹ See *Trade Acknowledgment and Verification of Security-Based Swap Transactions*, 81 FR at 30143-44.

⁵²⁰ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43946-50.

b. Amendments to Final Rule

A commenter requested that the Commission permit a foreign SBSD or MSBSP to satisfy its recordkeeping requirements by complying with recordkeeping rules established by its foreign regulator, provided the Commission determines such rules impose requirements comparable to Commission rules.⁵²¹ Another commenter stated that “[t]he Commission should allow non-U.S. SBSDs to satisfy any public disclosure requirements through substituted compliance.”⁵²² The Commission agrees with the commenters and is amending Rule 3a71-6 to provide foreign SBSDs and MSBSPs with the potential to utilize substituted compliance with comparable foreign requirements to satisfy Section 15F of the Exchange Act and Exchange Act Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 thereunder.⁵²³

A commenter requested that foreign branches of U.S. banks (*i.e.*, registered bank SBSDs that engage in dealing activity through foreign branches) be eligible for substituted compliance with respect to recordkeeping and reporting requirements classified as transaction-level requirements.⁵²⁴ As discussed above, the Commission does not believe it would be appropriate to treat the recordkeeping and reporting requirements as transaction-level requirements. In addition, the Commission has previously stated its belief that substituted compliance should not be available to registered entities that are U.S. persons.⁵²⁵

In amending Rule 3a71-6, the Commission concludes that the principles associated with substituted compliance for the business conduct, trade acknowledgment and verification, and capital and margin

⁵²¹ See SIFMA 9/5/2014 Letter. See also Letter from Kyle Brandon, Managing Director and Director of Research, Securities Industry and Financial Markets Association (Jan. 13, 2015) (“SIFMA 1/13/2015 Letter”).

⁵²² See IIB 3/25/2019 Meeting.

⁵²³ See paragraph (d)(6) of Rule 3a71-6, as amended. Rule 3a71-6 provides that substituted compliance is potentially available in connection with the business conduct requirements for foreign MSBSPs and SBSDs. This decision reflects the fact that the business conduct standards apply to MSBSPs and SBSDs, and recognizes that the market efficiency goals that underpin substituted compliance also can apply when substituted compliance is granted to MSBSPs. See *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR at 30076. This same reasoning applies with respect to the Commission’s recordkeeping and reporting requirements and Rule 3a71-6, as amended, provides that substituted compliance is also potentially available to foreign MSBSPs (in addition to foreign SBSDs) with respect to Section 15F of the Exchange Act and Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9, as applicable.

⁵²⁴ See SIFMA 9/5/2014 Letter.

⁵²⁵ See *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR at 30077.

requirements in large part similarly apply to these recordkeeping and reporting requirements. Accordingly, except as discussed below, the revised substituted compliance rule applies to Section 15F of the Exchange Act and Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 thereunder in the same manner as it applies to the business conduct, trade acknowledgment and verification, and capital and margin requirements.

i. Basis for Substituted Compliance in Connection with the Recordkeeping and Reporting Requirements

In light of the global nature of the security-based swap market and the prevalence of cross-border transactions within that market, there is the potential that the application of the Title VII recordkeeping and reporting requirements may lead to requirements that are duplicative of or in conflict with applicable foreign requirements, even when the two sets of requirements implement similar goals and lead to similar results. Those results have the potential to disrupt existing business relationships, and, more generally, to reduce competition and market efficiency.⁵²⁶

To address those effects, the Commission concludes that under certain circumstances it may be appropriate to allow for the possibility of substituted compliance whereby foreign SBSs and MSBSPs may satisfy Section 15F of the Exchange Act and Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 thereunder by complying with comparable foreign requirements. Allowing for the possibility of substituted compliance in this manner may help achieve the benefits of these recordkeeping and reporting requirements in a way that helps avoid regulatory duplication or conflict and hence promotes market efficiency, enhances competition, and facilitates a well-functioning global security-based swap market. Accordingly, Rule 3a71-6 is amended to identify the recordkeeping and reporting requirements of Section 15F of the Exchange Act and Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 thereunder as being eligible for substituted compliance.⁵²⁷

⁵²⁶ See generally *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR at 30073-74 (addressing the basis for making substituted compliance available in the context of the business conduct requirements).

⁵²⁷ See paragraph (d) of Rule 3a71-6, as adopted. Paragraph (a)(1) of Rule 3a71-6 provides that the Commission may, conditionally or unconditionally, by order, make a determination with respect to a foreign financial regulatory system that compliance with specified requirements under that foreign financial system by a registered SBS and/or registered MSBSP,

ii. Comparability Criteria, and Consideration of Related Requirements

The Commission will endeavor to take a holistic approach in determining the comparability of foreign requirements for substituted compliance purposes, focusing on regulatory outcomes as a whole rather than on requirement-by-requirement similarity.⁵²⁸ The Commission's comparability assessments associated with Section 15F of the Exchange Act and Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 thereunder accordingly will consider whether, in the Commission's view, the foreign regulatory system achieves regulatory outcomes that are comparable to the regulatory outcomes associated with these recordkeeping and reporting requirements. However, paragraph (a)(2)(i) of Rule 3a71-6 provides that the Commission's substituted compliance determination will take into account factors that the Commission determines appropriate, such as, for example the scope and objectives of the relevant foreign regulatory requirements, as well as the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by a foreign financial regulatory authority or authorities in such system to support its oversight of such foreign security-based swap entity (or class thereof) or of the activities of such security-based swap entity (or class thereof).

In reviewing applications, the Commission may determine to conduct its comparability analyses regarding the recordkeeping and reporting requirements in conjunction with comparability analyses regarding other Exchange Act requirements in connection with SBSDs and MSBSPs. Accordingly, depending on the applicable facts and circumstances, the comparability assessment associated with the recordkeeping and reporting requirements may constitute part of a broader assessment of the foreign regulatory system's risk mitigation requirements, and the applicable comparability assessments may be conducted at the level of those risk mitigation requirements as a whole.

or class thereof, may satisfy the corresponding requirements identified in paragraph (d) of the rule that would otherwise apply.

⁵²⁸ See, e.g., *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR at 30078-79.

Commenters generally requested additional guidance regarding the criteria the Commission would consider when making a substituted compliance determination.⁵²⁹ Such criteria have been set forth in the final rule as discussed below. The Commission’s recordkeeping, reporting, notification, and security count requirements reflect and support prudent business practices and accountability of registrants and have facilitated the ability of securities regulators to review and monitor compliance with securities laws. The Commission’s recordkeeping and reporting requirements are integral to the ability of the Commission and other securities regulators to effectively examine and inspect regulated firms’ compliance with the applicable securities laws.⁵³⁰ More specifically, the records that firms are required to preserve can be reviewed by Commission staff and other securities regulators to monitor compliance with applicable securities laws.⁵³¹ Similarly, FOCUS Reports are used to determine which firms are engaged in various securities-related activities, and how economic events and government policies might affect segments of the securities industry.⁵³²

The Commission’s recordkeeping and reporting requirements are also important for protecting customers against the risks involved in having their securities held by a third party.⁵³³ A failure to maintain accurate, accessible, and true records may lead to situations where a firm cannot account for customer property

⁵²⁹ See, e.g., Letter from Catherine T. Dixon, Chair, Federal Regulation of Securities Committee, American Bar Association (Oct. 2, 2013); Letter from Americans for Financial Reform (Aug. 22, 2013); Letter from Futures and Options Association (Aug. 21, 2013).

⁵³⁰ See *Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f)*, 66 FR at 22917, 22921 (The Commission’s recordkeeping rules “impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business. The requirements are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws”. “Investor protection depends on the examination process, which, in turn, relies on the records that broker-dealers are required to make and maintain.”); *FOCUS Reporting System; Requirements for Financial Reporting*, Exchange Act Release No. 17534 (Feb. 11, 1981), 46 FR 13205, 13205 (Feb. 20, 1981) (“The FOCUS Report is one of the primary means of monitoring the financial and operational condition of brokers and dealers and enforcing the financial responsibility rules”).

⁵³¹ See *Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f)*, 66 FR at 22917.

⁵³² See *FOCUS Reporting System; Requirements for Financial Reporting*, 46 FR at 13205.

⁵³³ See *Study of Unsafe and Unsound Practices of Brokers and Dealers* at 6 (the Commission’s reporting requirements, “together with the Commission’s inspection powers, [are] an integral element in the arsenal for protection of customers against the risks involved in leaving securities with their broker-dealer”).

or its own assets.⁵³⁴ Similarly, the Commission’s reporting requirements promote transparency of the financial and operational condition of broker-dealers to the Commission, the firm’s DEA, and, in the case of a portion of the annual reports, to the public.⁵³⁵

In light of these considerations, paragraph (d)(6) of Rule 3a71-6 states that prior to making a substituted compliance determination regarding SBSB and MSBSP recordkeeping and reporting requirements, the Commission intends to consider (in addition to any conditions imposed), whether the foreign financial regulatory system’s required records and reports, the timeframes for recording or reporting information, the accounting standards governing the records and reports, and the required format of the records and reports are comparable to applicable provisions arising under the Act and its rules and regulations and would permit the Commission to examine and inspect regulated firms’ compliance with the applicable securities laws.

A commenter stated that a Commission substituted compliance determination should not be a prerequisite for a foreign bank SBSB to comply with “home-country” financial recordkeeping and reporting requirements in lieu of the Commission’s requirements.⁵³⁶ The commenter referred to this approach as “Automatic Substituted Compliance” for foreign bank SBSBs. Rule 3a71-6 does not provide “automatic” substituted compliance for any type of registrant. Moreover, as discussed above, the Commission preliminarily interpreted the Title VII requirements associated with registration to apply generally to the activities of registered entities.⁵³⁷ Further, in reaching that preliminary conclusion, the Commission did not concur with the views of certain commenters that the Title VII requirements should not apply to the foreign security-based swap activities of registered entities, stating that such a view could be difficult to reconcile with, among other things,

⁵³⁴ See *Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f)*, 66 FR at 22919 (“A failure to maintain accurate, accessible, and true records may lead to situations where a firm cannot account for customer property or its own assets. For these reasons, the Commission’s broker-dealer recordkeeping requirements are an important part of managing systemic risk in the industry.”).

⁵³⁵ See section II.B.1. of this release.

⁵³⁶ See IIB 3/25/2019 Meeting.

⁵³⁷ See *Trade Acknowledgment and Verification of Security-Based Swap Transactions*, 81 FR at 39825, n.191 (citing *Cross-Border Proposing Release*, 78 FR at 30986).

the statutory language describing the requirements applicable to SBSBs.⁵³⁸ The Commission believes that it is appropriate to evaluate the substance of a foreign regulatory system to which substituted compliance would apply before granting substituted compliance to an entity. An “automatic” substituted compliance regime would be contrary to this view, as it would permit a foreign bank SBSB to comply with local requirements without any analyses by the Commission as to whether those requirements were comparable to the Commission’s requirements. Therefore, the Commission does not believe the approach suggested by the commenter would be appropriate.

The same commenter stated that the Commission should allow a foreign stand-alone SBSB to satisfy financial recordkeeping and reporting requirements through substituted compliance if the SBSB qualifies for substituted compliance with respect to the Commission’s capital and margin requirements for SBSBs.⁵³⁹ The commenter referred to this approach as “One-Step Substituted Compliance.” The Commission does not believe that a positive substituted compliance determination with respect to nonbank SBSB capital and margin requirements should automatically result in a positive substituted compliance determination with respect to SBSB recordkeeping and reporting requirements. Once again, the Commission believes that it is appropriate to evaluate the substance of each foreign regulatory system to which substituted compliance would apply before granting substituted compliance to an entity. As discussed above, the recordkeeping and reporting requirements are integral to the ability of the Commission and other securities regulators to effectively examine and inspect regulated firms’ compliance with the applicable securities laws, including capital and margin requirements. Therefore, the Commission will need to analyze a jurisdiction’s recordkeeping and reporting requirements to determine whether they would permit the Commission to examine and inspect regulated firms’ compliance with the applicable securities laws in a manner comparable to its examinations and inspections for firms subject to the recordkeeping and reporting requirements specified in Section 15F of the Exchange Act and Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9.

⁵³⁸ See *Cross-Border Proposing Release*, 78 FR at 30986.

⁵³⁹ See IIB 3/25/2019 Meeting.

However, as discussed above, in reviewing substituted compliance applications, the Commission may conduct its comparability analyses regarding the recordkeeping and reporting requirements in conjunction with comparability analyses regarding other Exchange Act requirements that promote risk management in connection with SBSBs and MSBSBs. Thus, the Commission’s comparability analyses regarding the recordkeeping and reporting requirements could be made in conjunction with comparability analyses regarding capital and margin requirements.

Finally, this commenter also stated that, if substituted compliance is not available with respect to a disclosure requirement, “the Commission should limit the application of such public disclosure requirements to SBSBs that are not otherwise subject to a public disclosure regime.”⁵⁴⁰ For example, the commenter argues that paragraph (b)(7) of Rule 18a-7, as proposed, “could require a standalone SBSB that is a public reporting company to publish material, non-public information every six months, rather than on an annual basis on Form 20-F.”⁵⁴¹ Form 20-F, however, requires the public disclosure of substantially more information than will be required by Rule 18a-7, which requires relatively little information to be publicly disclosed. Moreover, Rule 18a-7 will require the disclosure of information such as a firm’s net capital computation that may not be required under other disclosure regimes. For these reasons, the Commission is not adopting the commenter’s proposed approach.

G. Amendments to Rule 18a-1

Paragraph (e) of appendix E to Rule 15c3-1 establishes a non-exclusive list of circumstances under which the Commission may restrict the business of an ANC broker-dealer, including when the firm fails to meet the reporting requirements set forth in Rule 17a-5 or an event specified in Rule 17a-11 occurs. The Commission proposed a parallel provision in Rule 18a-1 to apply to a stand-alone SBSB authorized to use models.⁵⁴² The circumstances in proposed Rule 18a-1 under which the Commission could have restricted the

⁵⁴⁰ See IIB 3/25/2019 Meeting.

⁵⁴¹ See IIB 3/25/2019 Meeting.

⁵⁴² See *Capital, Margin, and Segregation Proposing Release*, 77 FR at 70240, 70338.

stand-alone SBSB's business included that the firm failed to meet a proposed reporting requirement or an event in the proposed notification rule for SBSBs occurs. The Commission adopted the provision in Rule 18a-1 under which the Commission may restrict the business of a stand-alone SBSB or OTCDD/SBSB authorized to use models.⁵⁴³ However, in the final rule, the circumstances under which the Commission can restrict a firm's business did not include that the firm fails to meet a reporting requirement or an event in the notification rule for SBSBs occurs. As the SBSB reporting and notification rules are being adopted in this document, the Commission is amending Rule 18a-1 to add these circumstances to those listed in the rule under which the Commission may restrict the business of a stand-alone SBSB or OTCDD/SBSB authorized to use models: (1) the SBSB fails to meet the reporting requirements set forth in Rule 18a-7; or (2) any event specified in Rule 18a-8 occurs.⁵⁴⁴

H. Delegation of Authority

In recognition of the adoption in this document of recordkeeping, reporting, and notification requirements for SBSBs and MSBSPs, securities count requirements applicable to certain SBSBs, and additional recordkeeping requirements applicable to broker-dealers to account for their security-based swap and swap activities in accordance with the Dodd-Frank Act, the Commission is amending its rule governing delegations of authority to the Director of the Division of Trading and Markets ("Division").

Because OTC derivatives dealers will be required to file FOCUS Report Part II instead of FOCUS Report Part IIB, the reference to FOCUS Report Part IIB is being changed to FOCUS Report Part II. Specifically, paragraph (a)(65) of 17 CFR 200.30-3 ("Rule 30-3") is being amended to delegate authority to the Division to authorize the issuance of orders requiring OTC derivatives dealers to file FOCUS Report Part II instead of FOCUS Report Part IIB. In addition, due to re-numbering of paragraphs as a result of these amendments, paragraph (a)(30) of Rule 30-3 is amended to cross-reference paragraph (a)(3) instead of

⁵⁴³ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 44058-59.

⁵⁴⁴ See paragraphs (d)(9)(iii)(A) and (B) of Rule 18a-1, as amended.

paragraph (a)(4) of Rule 17a-5. Finally, paragraph (a)(65)'s cross-reference to Rule 17a-12 is corrected to read “§ 240.17a-12(a)(1)(ii)” instead of “§ 240.17a-12(a)(ii),”⁵⁴⁵ and paragraph (a)(5)'s cross-reference to Rule 17a-5 is corrected to read “§ 240.17a-5(m)(3) of this chapter (Rule 17a-5(m)(3))” instead of “Rule 17a-5(1)(3) (§ 240.17a-5(1)(3) of this chapter).” These delegations of authority are intended to preserve Commission resources and increase the effectiveness and efficiency of the Commission's oversight of compliance with the financial responsibility rules. Nevertheless, the Division may submit matters to the Commission for its consideration, as it deems appropriate.

Administrative Law Matters

The Commission finds, in accordance with the Administrative Procedure Act (“APA”),⁵⁴⁶ that these amendments relate solely to agency organization, procedure, or practice, and do not relate to a substantive rule. Accordingly, the provisions of the APA regarding notice of rulemaking, opportunity for public comment, and publication of the amendment prior to its effective date are not applicable. For the same reason, and because this amendment does not substantively affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act,⁵⁴⁷ are not applicable. Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law,⁵⁴⁸ are not applicable. Further, because this amendment imposes no new burdens on private persons, the Commission does not believe that the amendment will have any anti-competitive effects for purposes of Section 23(a)(2) of the Exchange Act.⁵⁴⁹ Finally, this amendment does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended.

⁵⁴⁵ See paragraph (a)(65)(i) of Rule 30-3 under the Exchange Act, as amended.

⁵⁴⁶ See 5 U.S.C. 553(b)(3)(A).

⁵⁴⁷ See 5 U.S.C. 804(3)(C).

⁵⁴⁸ See 5 U.S.C. 603.

⁵⁴⁹ See 15 U.S.C. 78w(a)(2).

III. EXPLANATION OF DATES

A. Effective Date

These final rules will be effective 60 days following publication of this release in the *Federal Register*.

B. Compliance Date

The compliance date for the rules being adopted in this document, other than the amendments to Rule 3a71-6 discussed below, will be 18 months after the effective date of any final rules originally proposed in May 2019 addressing the cross-border application of certain security-based swap requirements.⁵⁵⁰ As set forth recently in the release adopting capital, margin, and segregation requirements, this compliance date will also be the compliance date for SBSB and MSBSP registration requirements (the “Registration Compliance Date”).⁵⁵¹ The Commission believes the compliance date provided in this release, which will be in excess of 18 months, will allow sufficient time to prepare for and come into compliance with the new recordkeeping and reporting requirements.

A commenter asked to delay cross-border application of the Commission’s recordkeeping and reporting rules with respect to home jurisdiction regulations that have not yet been finalized, as a preferable solution to requiring foreign firms to build the technological, operational, and compliance systems required to comply with U.S. law for a short, interim period if the home jurisdiction is ultimately deemed comparable for substituted compliance purposes.⁵⁵² The commenter’s concerns should be mitigated by the extended compliance date applicable to the rules being adopted in this document. The Commission believes that such a delay would not

⁵⁵⁰ The Commission proposed rules on May 10, 2019 which include rules and/or guidance regarding security-based swap transactions “arranged, negotiated, or executed” by personnel located in the United States, the cross-border scope of the SBSB *de minimis* exception, the certification and opinion of counsel requirement of Rule 15Fb2-1, the questionnaire and application requirement of Rule 18a-5, and the cross-border application of the statutory disqualification prohibition within Section 15F(b)(6) of the Exchange Act. *See Cross-Border Application Proposing Release*, 84 FR at 24206.

⁵⁵¹ *See Capital, Margin, and Segregation Adopting Release*, 84 FR at 43954-57. Moreover, as explained in that release, the Registration Compliance Date will also be the compliance date for (1) nonbank SBSB and MSBSP capital and margin requirements; (2) SBSB and MSBSP segregation requirements; (3) SBSB and MSBSP business conduct and chief compliance officer requirements; and (4) SBSB and MSBSP trade acknowledgement and verification requirements. *See also Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR at 30081; *see also Trade Acknowledgment and Verification of Security-Based Swap Transactions*, 81 FR 39807.

⁵⁵² *See SIFMA 9/5/2014 Letter*.

be appropriate because a comprehensive set of records will be integral to the Commission's ability to exercise its regulatory responsibilities once these firms are registered.⁵⁵³ In addition, as discussed below in section III.D. of this release, to address concerns that the compliance date could be before substituted compliance determinations are made, the Commission would consider substituted compliance requests that are submitted prior to the compliance date.

Finally, one commenter stated that SBSDs and MSBSPs will require adequate time following registration to begin complying with substantive Title VII requirements, since considerable resources will be needed to amend recordkeeping systems and documentation processes between finalization of recordkeeping and documentation rules and the initial compliance dates for those rules.⁵⁵⁴ Regarding the Commission's policy statement on the sequencing of final rules governing security-based swaps,⁵⁵⁵ another commenter suggested grouping rulemakings into two categories in terms of the applicable compliance date.⁵⁵⁶ In response, the Commission notes that it has coordinated the compliance dates for the Commission's: (1) SBSD and MSBSP registration requirements; (2) nonbank SBSD and MSBSP capital and margin requirements; (3) SBSD and MSBSP segregation requirements; (4) SBSD and MSBSP recordkeeping and reporting requirements; (5) SBSD and MSBSP business conduct and chief compliance officer requirements; (6) SBSD and MSBSP trade acknowledgement and verification requirements; and (7) statutory disqualification process. The Commission also does not believe it would be appropriate to delay the compliance date for the Commission's recordkeeping

⁵⁵³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25197 ("The recordkeeping, reporting, notification, and securities count requirements applicable to broker-dealers are an integral part of the financial responsibility rules as they are designed to provide transparency into the business activities of broker-dealers and to assist the Commission and other securities regulators in reviewing and monitoring compliance with the capital, margin, and segregation requirements.").

⁵⁵⁴ See Letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, Securities Industry and Financial Markets Association (Aug. 13, 2012) ("SIFMA 8/13/2012 Letter"). See also Memorandum from Richard E. Grant, Office of Commissioner Michael S. Piwowar, regarding an email from Sarah A. Miller, Chief Executive Officer, Institute of International Bankers (Nov. 16, 2016) ("IIB 11/16/2016 Letter").

⁵⁵⁵ See *Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act*, Exchange Act Release No. 67177 (June 11, 2012), 77 FR 35625 (June 14, 2012). Comments on the sequencing policy statement which are relevant to the Commission's recordkeeping and reporting requirements are available at <http://www.sec.gov/comments/s7-05-12/s70512.shtml>.

⁵⁵⁶ See Letter from Chris Barnard (Aug. 13, 2012).

rules beyond the compliance date for the rules establishing the registration process for SBSs and MSBSs, because this would undermine the Commission’s ability to effectively regulate and supervise registrants.

C. Effect on Existing Commission Exemptive Relief

On July 1, 2011, the Commission issued an order granting, among other things, temporary exemptive relief from compliance with certain recordkeeping and reporting provisions of the Exchange Act that would have applied to the security-based swap activities of registered broker-dealers due to the expansion of the Exchange Act definition of “security” to include security-based swaps.⁵⁵⁷ The compliance dates of this release implicate the expiration of this temporary exemptive relief related to registered broker-dealer recordkeeping and reporting requirements.

With regard to the recordkeeping and reporting obligations of registered broker-dealers, the Exchange Act Exemptive Order provided limited exemptions for registered broker-dealers, subject to certain conditions and limitations, from compliance with Sections 17(a) and 17(b) of the Exchange Act and Rules 17a-3, 17a-4, 17a-5, 17a-11, and 17a-13 (collectively, “the Recordkeeping Provision Exemptions”) in connection with security-based swaps solely to the extent the provisions or rules did not apply to the broker-dealer’s security-based swap positions or activities as of July 15, 2011.⁵⁵⁸ The Exchange Act Exemptive Order also provided that, until such time as the underlying exemptive relief expires, no contract entered into on or after July 16, 2011 shall be void or considered voidable by reason of Section 29(b) of the Exchange Act because any person that is a party to the contract violated a provision of the Exchange Act for which the Commission provided exemptive relief in the Exchange Act Exemptive Order (“Section 29(b) Exemption”).⁵⁵⁹ The Recordkeeping Provision Exemptions are scheduled to expire on the compliance date for any final rules regarding

⁵⁵⁷ See *Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revisions of the Definition of “Security” to Encompass Security-Based Swaps*, Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (“Exchange Act Exemptive Order”).

⁵⁵⁸ See Exchange Act Exemptive Order at 39938-39.

⁵⁵⁹ See Exchange Act Exemptive Order at 39940.

recordkeeping and reporting requirements for SBSDs and MSBSPs.⁵⁶⁰ Accordingly, all the Recordkeeping Provision Exemptions, together with the portion of the Section 29(b) Exemption that relates to the Exchange Act provisions for which the Commission provided exemptive relief in the Recordkeeping Provision Exemptions, will expire upon the compliance date set forth in section III.B. of this release.

In addition, the Commission also has provided an exemption from the “dealer” registration requirements of Section 15(a)(1) of the Exchange Act, and the other requirements of the Exchange Act and the rules and regulations thereunder that apply to a dealer that is not registered with the Commission, solely in connection with dealing activities involving security-based swaps with counterparties that meet the definition of eligible contract participant as set forth in Section 1a(12) of the CEA as in effect on July 20, 2010 (“Dealer Exemptions”).⁵⁶¹ The Dealer Exemptions are scheduled to expire on the later of the compliance dates set forth in any final rules regarding capital, margin, and segregation requirements for SBSDs and MSBSPs and any final rules regarding recordkeeping and reporting requirements for SBSDs and MSBSPs⁵⁶² As noted in section III.B.

⁵⁶⁰ The Recordkeeping Provision Exemptions originally were set to expire on the compliance date for any final rules further defining the terms “security-based swap” and “eligible contract participant.” See Exchange Act Exemptive Order at 39938-39. In the final rules further defining the term “security-based swap,” the Commission extended this expiration date to February 13, 2013. See *Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 FR at 48304. On February 7, 2013, the Commission extended the expiration date until February 11, 2014. See *Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of “Security” to Encompass Security-Based Swaps, and Request for Comment*, Exchange Act Release No. 68864 (Feb. 7, 2013), 78 FR 10218, 10220 (Feb. 13, 2013). On February 5, 2014, the Commission further extended the expiration date until the compliance date set forth in any recordkeeping and reporting rules for SBSDs and MSBSPs. See *Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of “Security” to Encompass Security-Based Swaps, and Request for Comment*, Exchange Act Release No. 71485 (Feb. 5, 2014), 79 FR 7731, 7734 (Feb. 10, 2014) (“Exchange Act Exemption Extension Order”).

⁵⁶¹ See Exchange Act Exemptive Order at 39939.

⁵⁶² The Dealer Exemptions originally were set to expire on the compliance date for any final rules further defining the terms “security-based swap” and “eligible contract participant.” See Exchange Act Exemptive Order at 39938, 39940. In the final rules further defining the term “security-based swap,” the Commission extended this expiration date to February 13, 2013. See *Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 FR at 48304. On February 7, 2013, the Commission again extended the expiration date until February 11, 2014. See *Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of “Security” to Encompass Security-Based Swaps, and Request for Comment*, 78 FR at 10220. On February 5, 2014, the Commission further extended the expiration date until the later of the compliance dates set forth in any final rules regarding capital, margin, and segregation requirements for SBSDs and MSBSPs and any final rules regarding recordkeeping and reporting requirements for SBSDs and MSBSPs. See Exchange Act Exemption Extension Order at 7734-35.

of this release, both relevant compliance dates will be 18 months after the effective date of any final rules addressing the cross-border application of certain security-based swap requirements or the Registration Compliance Date. Accordingly, all of the Dealer Exemptions, together with the portion of the Section 29(b) Exemption that relates to the Exchange Act provisions for which the Commission provided exemptive relief in the Dealer Exemptions, will expire upon the Registration Compliance Date.

Finally, the Commission has provided an exemption from the “broker” registration requirements of Section 15(a)(1) of the Exchange Act, and the other requirements of the Exchange Act and the rules and regulations thereunder that apply to a broker that is not registered with the Commission, solely in connection with broker activities involving security-based swaps (“Broker Exemptions”).⁵⁶³ The Broker Exemptions are scheduled to expire on the later of the compliance dates set forth in any final rules regarding capital, margin, and segregation requirements for SBSDs and MSBSPs and any final rules regarding recordkeeping and reporting requirements for SBSDs and MSBSPs.⁵⁶⁴ However, the Commission has stated that an entity that meets the definition of “security-based swap execution facility” in Section 3(a)(77) of the Exchange Act also would meet the definition of “broker” in Section 3(a)(4) of the Act.⁵⁶⁵ The Commission also has granted temporary exemptions from the registration requirements for security-based swap execution facilities in Section 3D(a)(1) of the Exchange Act and from certain disclosure requirements in Section 3D(c) of the Exchange Act

⁵⁶³ See Exchange Act Exemptive Order at 39939.

⁵⁶⁴ The Broker Exemptions originally were set to expire on the compliance date for any final rules further defining the terms “security-based swap” and “eligible contract participant.” See Exchange Act Exemptive Order at 39938, 39940. In the final rules further defining the term “security-based swap,” the Commission extended this expiration date to February 13, 2013. See *Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 FR at 48304. On February 7, 2013, the Commission again extended the expiration date until February 11, 2014. See *Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of “Security” to Encompass Security-Based Swaps, and Request for Comment*, 78 FR at 10220. On February 5, 2014, the Commission further extended the expiration date until the later of the compliance dates set forth in any final rules regarding capital, margin, and segregation requirements for SBSDs and MSBSPs and any final rules regarding recordkeeping and reporting requirements for SBSDs and MSBSPs. See Exchange Act Exemption Extension Order at 7734-35.

⁵⁶⁵ *Registration and Regulation of Security-Based Swap Execution Facilities*, Exchange Act Release No. 63825 (Feb. 2, 2011), 76 FR 10948, 10959 (Feb. 28, 2011).

(“SB SEF Exemptions”).⁵⁶⁶ The SB SEF Exemptions will expire on the earliest compliance date set forth in any of the final rules regarding registration of security-based swap execution facilities.⁵⁶⁷ The Commission recognizes that market participants who currently rely on the SB SEF Exemptions pending the Commission’s finalization of registration rules for security-based swap execution facilities may also currently rely on the Broker Exemptions. The Commission therefore finds that it is necessary and appropriate in the public interest and consistent with the protection of investors to extend the Broker Exemptions, insofar as they apply to persons and activities subject to the SB SEF Exemptions, until the expiration date for the SB SEF Exemptions.⁵⁶⁸

Accordingly, solely for purposes of the Exchange Act Exemption Extension Order as it relates to exemption from the “broker” registration requirements of Section 15(a)(1) of the Exchange Act and the other requirements of the Exchange Act and the rules and regulations thereunder that apply to a broker that is not registered with the Commission, and solely in connection with the operation of a facility for the trading or processing of security-based swaps that is not currently registered as a national securities exchange or as a security-based swap execution facility (“SB SEF Broker Exemptions”), the compliance date is the expiration date of the SB SEF Exemptions. Similarly, solely for purposes of the Exchange Act Exemption Extension Order as it relates to the portion of the Section 29(b) Exemption that relates to the Exchange Act provisions for which the Commission provided exemptive relief in the SB SEF Broker Exemptions, the compliance date set forth in this release is the expiration date of the SB SEF Exemptions. All other portions of the Broker Exemptions, together with the portion of the Section 29(b) Exemption that relates to the Exchange Act provisions for which the Commission provided exemptive relief in these other portions of the Broker Exemptions, will expire upon the Registration Compliance Date.

⁵⁶⁶ See *Temporary Exemptions and Other Temporary Relief, Together with Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps*, Exchange Act Release No. 64678 (June 15, 2011), 76 FR 36287, 36292-93, 36306 (June 22, 2011).

⁵⁶⁷ See *id.*

⁵⁶⁸ See 15 U.S.C. 78mm.

D. Application to Substituted Compliance

For the amendments to Rule 3a71-6 being adopted in this release to provide foreign SBSs and MSBSs with the potential to utilize substituted compliance with comparable foreign requirements to satisfy Section 15F of the Exchange Act and new Exchange Act Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9, consistent with the other rules adopted in this document, the Commission is adopting an effective date of 60 days following publication in the Federal Register. There will be no separate compliance date in connection with that rule amendment, as the rule does not impose obligations upon entities. As discussed above, SBSs and MSBSs will not be required to comply with the recordkeeping and reporting requirements until they are registered, and the registration requirement for those entities will not be triggered until a number of regulatory benchmarks have been met.

In practice, the Commission recognizes that if the requirements of a foreign regime are comparable to Title VII requirements, and the other prerequisites to substituted compliance also have been satisfied, then it may be appropriate to permit an SBS or MSBS to rely on substituted compliance commencing at the time that entity is registered with the Commission. Accordingly, to address commenters' concerns that the compliance date could be before substituted compliance determinations are made, the Commission would consider substituted compliance requests that are submitted prior to the compliance date for its recordkeeping and reporting requirements.

IV. PAPERWORK REDUCTION ACT

Certain provisions of the rule amendments and new rules being adopted in this release contain a new "collection of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").⁵⁶⁹ The Commission submitted the rule amendments and new rules to the Office of Management and Budget ("OMB") for review and approval in accordance with the PRA.⁵⁷⁰ The Commission's earlier PRA assessments have been

⁵⁶⁹ See 44 U.S.C. 3501 *et seq.*

⁵⁷⁰ See 44 U.S.C. 3507(d); 5 CFR 1320.11.

revised to reflect the modifications to the rules and amendments from those that were proposed, as well as additional information and data now available to the Commission.⁵⁷¹ An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The titles and OMB control numbers for the collections of information are:

Rule	Rule Title	OMB Control Number
Rule 17a-3	Records to be made by certain exchange members, brokers and dealers	3235-0033
Rule 17a-4	Records to be preserved by certain exchange members, brokers and dealers	3235-0279
Rule 17a-5	Reports to be made by certain brokers and dealers	3235-0123
Rule 17a-11	Notification provisions for brokers and dealers	3235-0085
Rule 17a-12	Reports to be made by certain OTC derivatives dealers	3235-0498
Rule 18a-5	Records to be made by certain security-based swap dealers and major security-based swap participants	3235-0745
Rule 18a-6	Records to be preserved by certain security-based swap dealers and major security-based swap participants	3235-0751
Rule 18a-7	Reports to be made by certain security-based swap dealers and major security-based swap participants	3235-0749
Rule 18a-8	Notification provisions for security-based swap dealers and major security-based swap participants	3235-0750
Rule 18a-9	Quarterly security counts to be made by certain security-based swap dealers	3235-0752
Rule 18a-10	Alternative compliance mechanism for security-based swap dealers that are registered as swap dealers and have limited security-based swap activities	3235-0702
Rule 3a71-6	Substituted compliance for security-based swap dealers and major security-based swap participants	3235-0715

A. Summary of Collections of Information under the Rule Amendments and New Rules

1. Amendments to Rule 17a-3 and New Rule 18a-5

Rule 17a-3 requires a broker-dealer to make and keep current certain records. The Commission is amending this rule to account for the security-based swap and swap activities of broker-dealers, including broker-dealer SBSDs and MSBSPs. With respect to stand-alone SBSDs and MSBSPs, and bank SBSDs and

⁵⁷¹ The hourly rates use for internal professionals used throughout this section IV. of the release are taken from SIFMA's *Management & Professional Earnings in the Securities Industry 2013*, modified to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, in addition to SIFMA's *Office Salaries in the Securities Industry 2013*, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

MSBSPs, the Commission is adopting new Rule 18a-5 – which is modeled on Rule 17a-3, as amended – to require these registrants to make and keep current certain records.⁵⁷² Rule 18a-5 does not include a parallel requirement for every requirement in Rule 17a-3. Paragraph (a) of Rule 18a-5 contains recordkeeping requirements for stand-alone SBSDs and MSBSPs, and paragraph (b) contains recordkeeping requirements for bank SBSDs and MSBSPs that are more limited in scope. The amendments to Rule 17a-3 and new Rule 18a-5 establish a number of new collections of information, as summarized in the table below.

	Stand-alone broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	Non-model stand-alone SBSDs	Model stand-alone SBSDs	Bank SBSDs	Stand-alone MSBSPs
Trade blotters	17a-3(a)(1)*	17a-3(a)(1)*	17a-3(a)(1)*	17a-3(a)(1)*	18a-5(a)(1)	18a-5(a)(1)	18a-5(b)(1)	18a-5(a)(1)
General ledger					18a-5(a)(2)	18a-5(a)(2)		18a-5(a)(2)
Ledgers for customer and non-customer accounts	17a-3(a)(3)*	17a-3(a)(3)*	17a-3(a)(3)*	17a-3(a)(3)*	18a-5(a)(3)	18a-5(a)(3)	18a-5(b)(2)	18a-5(a)(3)
Stock record	17a-3(a)(5)*	17a-3(a)(5)*	17a-3(a)(5)*	17a-3(a)(5)*	18a-5(a)(4)	18a-5(a)(4)	18a-5(b)(3)	18a-5(a)(4)
Memoranda of brokerage orders	17a-3(a)(6)*	17a-3(a)(6)*	17a-3(a)(6)*	17a-3(a)(6)*			18a-5(b)(4)	
Memoranda of proprietary orders	17a-3(a)(7)*	17a-3(a)(7)*	17a-3(a)(7)*	17a-3(a)(7)*	18a-5(a)(5)	18a-5(a)(5)	18a-5(b)(5)	18a-5(a)(5)
Confirmations	17a-3(a)(8)*	17a-3(a)(8)*	17a-3(a)(8)*	17a-3(a)(8)*	18a-5(a)(6)	18a-5(a)(6)	18a-5(b)(6)	18a-5(a)(6)
Accountholder information	17a-3(a)(9)*	17a-3(a)(9)*	17a-3(a)(9)*	17a-3(a)(9)*	18a-5(a)(7)	18a-5(a)(7)	18a-5(b)(7)	18a-5(a)(7)
Options positions					18a-5(a)(8)	18a-5(a)(8)		18a-5(a)(8)
Trial balances and computation of net capital					18a-5(a)(9)	18a-5(a)(9)		18a-5(a)(9)
Associated person's employment application					18a-5(a)(10)	18a-5(a)(10)	18a-5(b)(8)	18a-5(a)(10)
Account equity and margin calculations under Rule 18a-3		17a-3(a)(25)	17a-3(a)(25)	17a-3(a)(25)	18a-5(a)(12)	18a-5(a)(12)		18a-5(a)(12)
Possession or control requirements for security-based swap customers	17a-3(a)(26)	17a-3(a)(26)	17a-3(a)(26)	17a-3(a)(26)	18a-5(a)(13)	18a-5(a)(13)	18a-5(b)(9)	
Security-based swap customer reserve requirements	17a-3(a)(27)	17a-3(a)(27)	17a-3(a)(27)	17a-3(a)(27)	18a-5(a)(14)	18a-5(a)(14)	18a-5(b)(10)	
Unverified transactions		17a-3(a)(28)	17a-3(a)(28)	17a-3(a)(28)	18a-5(a)(15)	18a-5(a)(15)	18a-5(b)(11)	18a-5(a)(15)
Political contributions		17a-3(a)(29)	17a-3(a)(29)		18a-5(a)(16)	18a-5(a)(16)	18a-5(b)(12)	
Compliance with business conduct requirements		17a-3(a)(30)	17a-3(a)(30)	17a-3(a)(30)	18a-5(a)(17)	18a-5(a)(17)	18a-5(b)(13)	18a-5(a)(17)

⁵⁷²

See Rule 18a-5, as adopted.

* The Commission is amending these pre-existing paragraphs of Rule 17a-3 to account for the security-based swap and swap activities of broker-dealers, including broker-dealer SBSs and MSBSs.

A commenter urged the Commission to harmonize its recordkeeping requirements for SBSs and MSBSs with the CFTC's final recordkeeping requirements for swap dealers and major swap participants to the maximum extent possible, with the goal of permitting firms to utilize a single recordkeeping system for swaps and security-based swaps.⁵⁷³ As discussed in more detail above, in response to the comment and to promote harmonization with CFTC requirements, the Commission is adopting a limited alternative compliance mechanism in Rules 17a-3 and 18a-5.⁵⁷⁴ In particular, an SBS or MSBS that also is registered with the CFTC as a swap dealer or major swap participant may comply with the recordkeeping requirements of the CEA and the rules thereunder applicable to swap dealers and major swap participants in lieu of complying with the requirements in Rules 17a-3 and 18a-5 to make and keep current trade blotters, customer account ledgers, and stock records solely with respect to information required to be included in these records regarding security-based swap transactions and positions if the SBS or MSBS meets certain conditions. The conditions include, among other things, that the SBS or MSBS preserves all of the data elements necessary to create these records as they pertain to security-based swap and swap transactions and upon request promptly furnishes to representatives of the Commission such records that includes security-based swap *and* swap transactions and positions in the format required by Rule 17a-3 or 18a-5, as applicable. This provision will permit an SBS or MSBS that also is registered with the CFTC as a swap dealer or major swap participant to maintain a single recordkeeping system for security-based swap and swap transactions and positions in accordance with the CFTC's rules with respect to these required records.

2. Amendments to Rule 17a-4 and New Rule 18a-6

Rule 17a-4 requires a broker-dealer to preserve certain records if it makes or receives them and prescribes the time period and the manner in which records must be preserved. The Commission is amending

⁵⁷³ See SIFMA 9/5/2014 Letter.

⁵⁷⁴ See paragraph (b) of Rule 17a-3, as amended; paragraph (c) of Rule 18a-5, as adopted.

this rule to account for the security-based swap and swap activities of broker-dealers, including broker-dealer SBSBs and MSBSBs. With respect to stand-alone SBSBs, stand-alone MSBSBs, bank SBSBs, and bank MSBSBs, the Commission is adopting new Rule 18a-6 – which is modeled on Rule 17a-4, as amended. Rule 18a-6 does not include a parallel requirement for every requirement in Rule 17a-4, and the recordkeeping requirements in Rule 18a-6 applicable to bank SBSBs and MSBSBs are more limited in scope than the requirements in the rule applicable to stand-alone SBSBs and MSBSBs. As discussed above, the records a broker-dealer, including a broker-dealer SBSB or MSBSB, is required to maintain and preserve under Rules 17a-3 and 17a-4 may be maintained and preserved by means of electronic storage media. The use of electronic storage media is subject to certain conditions, including that the media must preserve the records exclusively in a non-rewriteable and non-erasable format. In response to comment, the Commission is modifying Rule 18a-6 to eliminate the requirement that the electronic storage system preserve the records exclusively in a non-rewriteable and non-erasable format.⁵⁷⁵ The amendments to Rule 17a-4 and new Rule 18a-6 establish a number of new collections of information, as summarized in the table below.

	Stand-alone broker-dealers	Non-model broker-dealer SBSBs	ANC broker-dealer SBSBs	Broker-dealer MSBSBs	Non-model stand-alone SBSBs	Model stand-alone SBSBs	Bank SBSBs	Stand-alone MSBSBs
Records to be preserved for a period of not less than 6 years								
Trade blotters					18a-6(a)(1) citing 18a-5(a)(1)	18a-6(a)(1) citing 18a-5(a)(1)	18a-6(a)(2) citing 18a-5(b)(1)	18a-6(a)(1) citing 18a-5(a)(1)
General ledger					18a-6(a)(1) citing 18a-5(a)(2)	18a-6(a)(1) citing 18a-5(a)(2)		18a-6(a)(1) citing 18a-5(a)(2)
Ledgers for customer and non-customer accounts					18a-6(a)(1) citing 18a-5(a)(3)	18a-6(a)(1) citing 18a-5(a)(3)	18a-6(a)(2) citing 18a-5(b)(2)	18a-6(a)(1) citing 18a-5(a)(3)
Stock record					18a-6(a)(1) citing 18a-5(a)(4)	18a-6(a)(1) citing 18a-5(a)(4)	18a-6(a)(2) citing 18a-5(b)(3)	18a-6(a)(1) citing 18a-5(a)(4)
Records to be preserved for a period of not less than 3 years								
Memoranda of brokerage orders							18a-6 (b)(2)(i) citing 18a-5(b)(4)	
Memoranda of proprietary orders					18a-6 (b)(1)(i) citing 18a-5(a)(5)	18a-6 (b)(1)(i) citing 18a-5(a)(5)	18a-6 (b)(2)(i) citing 18a-5(b)(5)	18a-6 (b)(1)(i) citing 18a-5(a)(5)
Confirmations					18a-6	18a-6	18a-6	18a-6

⁵⁷⁵ See Rule 18a-6, as adopted.

	Stand-alone broker-dealers	Non-model broker-dealer SBSBs	ANC broker-dealer SBSBs	Broker-dealer MSBs	Non-model stand-alone SBSBs	Model stand-alone SBSBs	Bank SBSBs	Stand-alone MSBs
					(b)(1)(i) citing 18a-5(a)(6)	(b)(1)(i) citing 18a-5(a)(6)	(b)(2)(i) citing 18a-5(b)(6)	(b)(1)(i) citing 18a-5(a)(6)
Account holder information					18a-6 (b)(1)(i) citing 18a-5(a)(7)	18a-6 (b)(1)(i) citing 18a-5(a)(7)	18a-6 (b)(2)(i) citing 18a-5(b)(7)	18a-6 (b)(1)(i) citing 18a-5(a)(7)
Options positions					18a-6 (b)(1)(i) citing 18a-5(a)(8)	18a-6 (b)(1)(i) citing 18a-5(a)(8)		18a-6 (b)(1)(i) citing 18a-5(a)(8)
Trial balances and computation of net capital	17a-4(b)(1) citing 17a-3(a)(11)	17a-4(b)(1) citing 17a-3(a)(11)	17a-4(b)(1) citing 17a-3(a)(11)	17a-4(b)(1) citing 17a-3(a)(11)	18a-6 (b)(1)(i) citing 18a-5(a)(9)	18a-6 (b)(1)(i) citing 18a-5(a)(9)		18a-6 (b)(1)(i) citing 18a-5(a)(9)
Account equity and margin calculations under new Rule 18a-3		17a-4(b)(1) citing 17a-3(a)(25)	17a-4(b)(1) citing 17a-3(a)(25)	17a-4(b)(1) citing 17a-3(a)(25)	18a-6 (b)(1)(i) citing 18a-5(a)(12)	18a-6 (b)(1)(i) citing 18a-5(a)(12)		18a-6 (b)(1)(i) citing 18a-5(a)(12)
Possession or control requirements for security-based swap customers	17a-4(b)(1) citing 17a-3(a)(26)	17a-4(b)(1) citing 17a-3(a)(26)	17a-4(b)(1) citing 17a-3(a)(26)	17a-4(b)(1) citing 17a-3(a)(26)	18a-6 (b)(1)(i) citing 18a-5(a)(13)	18a-6 (b)(1)(i) citing 18a-5(a)(13)	18a-6 (b)(2)(i) citing 18a-5(b)(9)	
Security-based swap customer reserve requirements	17a-4(b)(1) citing 17a-3(a)(27)	17a-4(b)(1) citing 17a-3(a)(27)	17a-4(b)(1) citing 17a-3(a)(27)	17a-4(b)(1) citing 17a-3(a)(27)	18a-6 (b)(1)(i) citing 18a-5(a)(14)	18a-6 (b)(1)(i) citing 18a-5(a)(14)	18a-6 (b)(2)(i) citing 18a-5(b)(10)	
Unverified transactions		17a-4(b)(1) citing 17a-3(a)(28)	17a-4(b)(1) citing 17a-3(a)(28)	17a-4(b)(1) citing 17a-3(a)(28)	18a-6 (b)(1)(i) citing 18a-5(a)(15)	18a-6 (b)(1)(i) citing 18a-5(a)(15)	18a-6 (b)(2)(i) citing 18a-5(b)(11)	18a-6 (b)(1)(i) citing 18a-5(a)(15)
Political contributions		17a-4(b)(1) citing 17a-3(a)(29)	17a-4(b)(1) citing 17a-3(a)(29)		18a-6 (b)(1)(i) citing 18a-5(a)(16)	18a-6 (b)(1)(i) citing 18a-5(a)(16)	18a-6 (b)(2)(i) citing 18a-5(b)(12)	
Compliance with business conduct requirements		17a-4(b)(1) citing 17a-3(a)(30)	17a-4(b)(1) citing 17a-3(a)(30)	17a-4(b)(1) citing 17a-3(a)(30)	18a-6 (b)(1)(i) citing 18a-5(a)(17)	18a-6 (b)(1)(i) citing 18a-5(a)(17)	18a-6 (b)(2)(i) citing 18a-5(b)(13)	18a-6 (b)(1)(i) citing 18a-5(a)(17)
Bank records					18a-6 (b)(1)(ii)	18a-6 (b)(1)(ii)		18a-6 (b)(1)(ii)
Bills					18a-6 (b)(1)(iii)	18a-6 (b)(1)(iii)		18a-6 (b)(1)(iii)
Communications	17a-4(b)(4)*	17a-4(b)(4)*	17a-4(b)(4)*	17a-4(b)(4)*	18a-6 (b)(1)(iv)	18a-6 (b)(1)(iv)	18a-6 (b)(2)(ii)	18a-6 (b)(1)(iv)
Trial balances					18a-6 (b)(1)(v)	18a-6 (b)(1)(v)		18a-6 (b)(1)(v)
Account documents					18a-6 (b)(1)(vi)	18a-6 (b)(1)(vi)	18a-6 (b)(2)(iii)	18a-6 (b)(1)(vi)
Written agreements	17a-4(b)(7)*	17a-4(b)(7)*	17a-4(b)(7)*	17a-4(b)(7)*	18a-6 (b)(1)(vii)	18a-6 (b)(1)(vii)	18a-6 (b)(2)(iv)	18a-6 (b)(1)(vii)
Information supporting financial reports	17a-4(b)(8)*	17a-4(b)(8)*	17a-4(b)(8)*	17a-4(b)(8)*	18a-6 (b)(1)(viii)	18a-6 (b)(1)(viii)	18a-6 (b)(2)(v)	18a-6 (b)(1)(viii)
Rule 15c3-4 risk management records (OTC derivatives dealers only)					18a-6 (b)(1)(ix)	18a-6 (b)(1)(ix)		18a-6 (b)(1)(ix)

	Stand-alone broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	Non-model stand-alone SBSDs	Model stand-alone SBSDs	Bank SBSDs	Stand-alone MSBSPs
Credit risk determinations						18a-6 (b)(1)(x)		
Regulation SBSR information	17a-4(b)(14)	17a-4(b)(14)	17a-4(b)(14)	17a-4(b)(14)	18a-6 (b)(1)(xi)	18a-6 (b)(1)(xi)	18a-6 (b)(2)(vi)	18a-6 (b)(1)(xi)
Records relating to business conduct standards		17a-4(b)(15)	17a-4(b)(15)	17a-4(b)(15)	18a-6 (b)(1)(xii)	18a-6 (b)(1)(xii)	18a-6 (b)(2)(vii)	18a-6 (b)(1)(xii)
Special entity documents		17a-4(b)(16)	17a-4(b)(16)	17a-4(b)(16)	18a-6 (b)(1)(xiii)	18a-6 (b)(1)(xiii)	18a-6 (b)(2)(viii)	18a-6 (b)(1)(xiii)
Associated person's employment application					18a-6(d)(1)	18a-6(d)(1)	18a-6(d)(1)	18a-6(d)(1)
Regulatory authority reports					18a-6 (d)(2)(i)	18a-6 (d)(2)(i)	18a-6 (d)(2)(ii)	18a-6 (d)(2)(i)
Compliance, supervisory, and procedures manuals					18a-6 (d)(3)(i)	18a-6 (d)(3)(i)	18a-6 (d)(3)(ii)	18a-6 (d)(3)(i)
Life of the enterprise and of any successor enterprise								
Corporate documents	17a-4(d)*	17a-4(d)*	17a-4(d)*	17a-4(d)*	18a-6(c)	18a-6(c)		18a-6(c)

* The Commission is amending these pre-existing paragraphs of Rule 17a-4 to account for the security-based swap and swap activities of broker-dealers, including broker-dealer SBSDs and MSBSPs.

3. Amendments to Rule 17a-5 and New Rule 18a-7

Rule 17a-5, the broker-dealer reporting rule, requires, among other things, that broker-dealers file periodic unaudited reports about their financial and operational condition using the FOCUS Report form; and that broker-dealers annually file financial statements and certain reports, as well as reports covering those statements and reports prepared by an independent public accountant registered with the PCAOB, in accordance with PCAOB standards.

Rule 17a-5 is being amended to account for the security-based swap activities of entities subject to its requirements and new Rule 18a-7 – which is modeled on Rule 17a-5 – is being adopted to establish reporting requirements for SBSDs and MSBSPs that will not be subject to Rule 17a-5.⁵⁷⁶ A stand-alone broker-dealer, including a stand-alone OTC derivatives dealer, will continue to be subject to Rule 17a-5.⁵⁷⁷ Similarly, a broker-dealer, other than an OTC derivatives dealer, that is also an SBSD will be subject to Rule 17a-5. A

⁵⁷⁶ See section II.B.3.a. of this release (discussing the requirement to file annual reports and the qualifications of independent public accountants).

⁵⁷⁷ Paragraph (p) of Rule 17a-5 provides that an OTC derivatives dealer may comply with Rule 17a-5 by complying with the provisions of Rule 17a-12.

broker-dealer, including an OTC derivatives dealer, that is also an MSBSP will be subject to Rule 17a-5. A stand-alone SBSB will be subject to Rule 18a-7. Similarly, an SBSB that is also an OTC derivatives dealer will be subject to Rule 18a-7. A stand-alone MSBSP will be subject to Rule 18a-7. Finally, a bank SBSB or MSBSP will be subject to Rule 18a-7.

4. Amendments to Rule 17a-11 and New Rule 18a-8

Rule 17a-11 specifies the circumstances under which a broker-dealer must notify the Commission and other securities regulators about its financial or operational condition, as well as the form that the notice must take. The Commission is amending Rule 17a-11 to account for the security-based swap activities of broker-dealers.⁵⁷⁸ The Commission is adopting new Rule 18a-8 – which is modeled on Rule 17a-11, as amended – to establish notification requirements for stand-alone SBSBs and MSBSPs, and bank SBSBs and MSBSPs.⁵⁷⁹ The amendments to Rule 17a-11 and new Rule 18a-8 establish a number of new collections of information, as summarized in the table below.

	Non-SBSB/ MSBSP broker- dealers	Non-model broker- dealer SBSBs	ANC broker- dealer SBSBs	Broker- dealer MSBSPs	Model stand-alone SBSBs	Non-model stand-alone SBSBs	Bank SBSBs	Stand-alone MSBSPs
Net capital below minimum					18a-8 (a)(1)(i)	18a-8 (a)(1)(i)		
Tentative net capital below minimum					18a-8 (a)(1)(ii)			
Tangible net worth below minimum								18a-8 (a)(2)
Early warning of net capital					18a-8(b)(1)	18a-8(b)(1)		
Early warning of tentative net capital					18a-8 (b)(2)			
Early warning of tangible net worth								18a-8(b)(3)
Backtesting exception					18a-8(b)(4)			
Notice of adjustment of reported capital category							18a-8(c)	
Failure to make and keep current books and records					18a-8(d)	18a-8(d)	18a-8(d)	18a-8(d)
Material weakness					18a-8(e)	18a-8(e)		
Failure to make a required special reserve deposit	17a-11(f)	17a-11(f)	17a-11(f)		18a-8(g)	18a-8(g)	18a-8(g)	

⁵⁷⁸ See paragraph (f) of Rule 17a-11, as amended.

⁵⁷⁹ See Rule 18a-8, as adopted.

5. Amendments to Rule 17a-12

The amendments to Rule 17a-12, the OTC derivatives dealer reporting rule,⁵⁸⁰ require OTC derivatives dealers to file FOCUS Report Part II, as amended, instead of FOCUS Report Part IIB by replacing the phrase “Part II” with the phrase “Part IIB” each time it appears in the rule.⁵⁸¹

6. New Rule 18a-9

The Commission is adopting new Rule 18a-9, which is modeled on Rule 17a-13, to require stand-alone SBSBs to examine and count the securities they physically hold, account for the securities that are subject to their control or direction but are not in their physical possession, verify the locations of securities under certain circumstances, and compare the results of the count and verification with their records. Rule 18a-9 does not include a parallel requirement for every requirement in Rule 17a-13.⁵⁸² In addition, Rule 18a-9 does not apply to stand-alone MSBSPs because the customer protection rationale for Rules 17a-13 and 18a-9 is not as pertinent to stand-alone MSBSPs.

7. Amendments to Rule 18a-10

Rule 18a-10 permits certain SBSBs that are registered as swap dealers and that predominantly engage in a swaps business to elect to comply with the capital, margin, and segregation requirements of the CEA and the CFTC’s rules in lieu of complying with the capital, margin, and segregation requirements of Rules 18a-1, 18a-3, and 18a-4.⁵⁸³ The Commission is amending Rule 18a-10 to permit firms that will operate under the rule to elect to comply with the recordkeeping and reporting requirements of the CEA and the CFTC’s rules in lieu of complying with Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9.⁵⁸⁴

⁵⁸⁰ OTC derivatives dealers dually registered as SBSBs are subject to the reporting requirements of Rule 18a-7.

⁵⁸¹ OTC derivatives dealers dually registered as SBSBs or MSBSPs will also file FOCUS Report Part II.

⁵⁸² The Commission is not including in Rule 18a-9, as adopted, provisions that would parallel the provisions in paragraphs (a)(1), (2), and (3) and (e) of Rule 17a-13. These paragraphs of Rule 17a-13 provide exemptions from complying with Rule 17a-13 for certain types of broker-dealers. The Commission believes that SBSBs will not limit their activities to the types of activities in which the exempt broker-dealers engage.

⁵⁸³ *See Capital, Margin, and Segregation Adopting Release*, 84 FR at 43943-46.

⁵⁸⁴ *See* Rule 18a-10, as amended.

As discussed above, Rule 17a-11 specifies the circumstances under which a broker-dealer must notify the Commission and other regulators about its financial or operational condition, as well as the form of the notice. Stand-alone and bank SBSBs and MSBSPs are subject to Rule 18a-8, which is modeled on Rule 17a-11 and is designed to provide the Commission with the ability to take effective proactive steps to respond when a firm is experiencing or likely to experience financial difficulty.⁵⁸⁵ A stand-alone SBSB operating under Rule 18a-10, however, may comply with the notification requirements of the CFTC's rules in lieu of complying with Rule 18a-8. In order to retain a requirement that the SBSB provide notice to the Commission if it is experiencing or likely to experience financial difficulty, the Commission is adding paragraph (b)(4) to Rule 18a-10. This paragraph provides that the SBSB must simultaneously notify the Commission if the firm is required to send a notice concerning its capital, books and records, liquidity, margin operations, or segregation operations to the CFTC by transmitting to the Commission a copy of the notice being sent to the CFTC.⁵⁸⁶

8. Amendments to Rule 3a71-6

In May 2016, the Commission adopted Rule 3a71-6 to provide that foreign SBSBs and MSBSPs could satisfy applicable business conduct requirements under Section 15F by complying with comparable regulatory requirements of a foreign jurisdiction, subject to certain conditions. The Commission is amending Rule 3a71-6 to provide foreign SBSBs and MSBSPs with the option to apply for substituted compliance to satisfy the recordkeeping and reporting requirements of Section 15F of the Exchange Act and Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 thereunder.⁵⁸⁷

B. Use of Information

Rules 17a-3 and 17a-4, as amended, and new Rules 18a-5 and 18a-6 are designed, among other things, to promote the prudent operation of broker-dealers, SBSBs, and MSBSPs, and to assist the Commission, SROs,

⁵⁸⁵ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25247.

⁵⁸⁶ See paragraph (b)(4) of Rule 18a-10, as amended.

⁵⁸⁷ See paragraph (d)(6) of Rule 3a71-6, as amended.

and state securities regulators in conducting effective examinations.⁵⁸⁸ Thus, the collections of information under the amendments to Rules 17a-3 and 17a-4, and new Rules 18a-5 and 18a-6, are expected to facilitate the examinations of broker-dealers, SBSBs, and MSBSPs.

Rules 17a-5, 17a-11, 17a-12, and 18a-10, as amended, and new Rules 18a-7 and 18a-8 are designed to promote compliance with the financial responsibility requirements for broker-dealers, SBSBs, and MSBSPs, facilitate regulators' oversight and examinations of such firms, and promote transparency of their financial condition and operation.

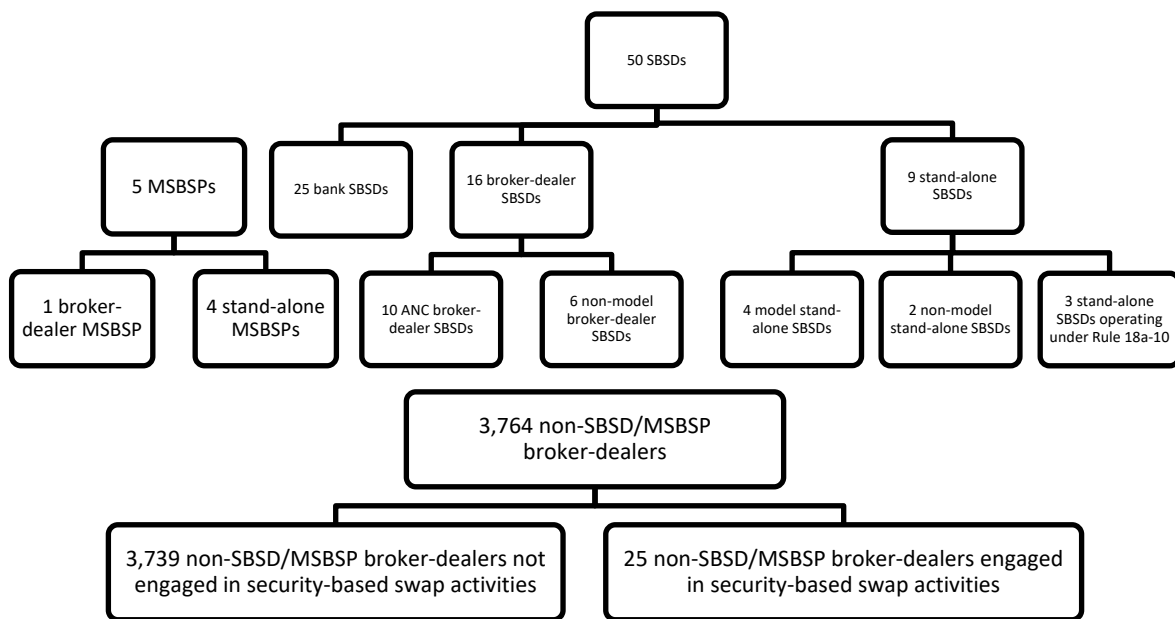
Rule 18a-9 is designed to promote an SBSB's custody of securities and accurate accounting for securities.

The Commission plans to use the information collected pursuant to Rule 3a71-6, as amended, to evaluate requests for substituted compliance determinations with respect to the recordkeeping and reporting requirements applicable to foreign SBSBs and MSBSPs.

C. Respondents

The Commission estimated the number of respondents in the proposing release. The Commission received no comment on these estimates and continues to believe they are appropriate. However, the Commission is updating its estimated number of broker-dealers to reflect the number of broker-dealers registered with the Commission as of December 31, 2018 (instead of April 1, 2013 as reflected in the proposing release), and is revising the number of respondents with respect to certain rules, as discussed below, to reflect the amendments to Rule 18a-10. The following chart summarizes the Commission's estimated number of respondents:

⁵⁸⁸ See, e.g., *Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934*, 66 FR at 55818 ("The Commission has required that broker-dealers create and maintain certain records so that, among other things, the Commission, [SROs], and State Securities Regulators . . . may conduct effective examinations of broker-dealers" (footnote omitted)).



Consistent with prior releases, based on available data regarding the single-name CDS market – which the Commission believes will comprise the majority of security-based swaps – the Commission estimates that the number of MSBSPs likely will be five or fewer and, in actuality, may be zero.⁵⁸⁹ Therefore, to capture the likely number of MSBSPs that may be subject to the collections of information for purposes of this PRA, the Commission estimates for purposes of this PRA that five entities will register with the Commission as MSBSPs.

The Commission estimates there will be one broker-dealer FCM MSBSP for the purposes of calculating PRA burdens, in recognition that broker-dealer MSBSPs and stand-alone MSBSPs are subject to different burdens under the new and amended rules in certain instances.⁵⁹⁰ However, by definition, an MSBSP’s primary business is not engaging in security-based swap activity, so it would be rare for an MSBSP to qualify as a broker-dealer and/or FCM but not an SBSD. Such an MSBSP would be engaged in the business of effecting

⁵⁸⁹ See *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 80 FR at 48990. See also *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”*, 77 FR at 30727.

⁵⁹⁰ The Commission believes that the broker-dealer MSBSP would register as an FCM, since the broker-dealer may find it beneficial to hedge security and security-based swap positions with futures contracts, options on futures, or swaps. See *Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants*, 76 FR at 65814.

securities transactions,⁵⁹¹ but not in the business of effecting security-based swap transactions⁵⁹² or commodities, securities futures products, or swaps⁵⁹³ and yet involved in enough security-based swap transactions to be required to register as an MSBSP.⁵⁹⁴

Consistent with prior releases, the Commission estimates that 50 or fewer entities ultimately may be required to register with the Commission as SBSBs, and 16 broker-dealers will likely seek to register as SBSBs.⁵⁹⁵ The Commission believes that all 16 broker-dealer SBSBs also will be registered as FCMs, since SBSBs may find it beneficial to hedge security-based swap positions with futures contracts, options on futures, or swaps.⁵⁹⁶

Because many of the dealers that currently engage in OTC derivatives activities are banks, the Commission estimates that approximately 75% of the 34 non-broker-dealer SBSBs will register as bank SBSBs (*i.e.*, 25 firms), and the remaining 25% will register as stand-alone SBSBs (*i.e.*, 9 firms).⁵⁹⁷ The Commission believes that none of the bank SBSBs will register as FCMs, because of the burden associated with complying with three different supervisors' regulatory requirements.⁵⁹⁸ However, the Commission cannot precisely estimate how many of the nine stand-alone SBSBs will register as FCMs. The Commission anticipates that entities that want to clear security-based swaps for others may also want to clear swaps for others and, therefore, may need to register as FCMs.⁵⁹⁹ The Commission also anticipates that some stand-alone SBSBs that deal in non-cleared security-based swaps will generally seek exemption from the omnibus segregation requirements in

⁵⁹¹ See Section 3(a)(4) of the Exchange Act.

⁵⁹² See Section 3(a)(71) of the Exchange Act.

⁵⁹³ See 7 U.S.C. 1a(28).

⁵⁹⁴ See Section 3(a)(67) of the Exchange Act.

⁵⁹⁵ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43959; *Recordkeeping and Reporting Proposing Release*, 79 FR at 25260.

⁵⁹⁶ See *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 80 FR at 79002.

⁵⁹⁷ The Commission does not anticipate that any firms will be dually registered as a broker-dealer and a bank.

⁵⁹⁸ The Commission understands that affiliates of banks (rather than banks) register as FCMs.

⁵⁹⁹ See *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 80 FR at 79002.

Rule 18a-4. In order to qualify for the exemption, these firms cannot clear security-based swap transactions for others. The Commission believes that stand-alone SBSBs that seek this exemption and thus will not clear security-based swaps for others likely also would not clear swaps for others, which obviates the need for these SBSBs to register as an FCM.⁶⁰⁰ For purposes of developing paperwork burden estimates in connection with the recently adopted capital, margin, and segregation requirements, the Commission estimated six of nine stand-alone SBSBs would avail themselves of the exemption under paragraph (f) of Rule 18a-4.⁶⁰¹ Consistent with that estimate, the Commission estimates that the remaining three of the nine stand-alone SBSBs will also be registered as FCMs.

Of the nine stand-alone SBSBs, the Commission estimates that, based on its experience with ANC broker-dealers and OTC derivatives dealers, four of the nine stand-alone SBSBs will apply to operate as stand-alone SBSBs which will use internal models to compute net capital under Rule 18a-1.⁶⁰² This estimate has been reduced from six in the proposing release⁶⁰³ to account for the adoption of Rule 18a-10, which will enable stand-alone SBSBs to elect the full alternative compliance mechanism and comply with certain CFTC rules in lieu of Commission rules, including recordkeeping and reporting rules. Finally, in the proposing release, the Commission estimated that three stand-alone SBSBs would not apply to use models.⁶⁰⁴ This estimate has been modified from three to two in the final release to account for the nonbank SBSBs that will elect the full alternative compliance mechanism under Rule 18a-10.

⁶⁰⁰ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 44025.

⁶⁰¹ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43959.

⁶⁰² VaR models, while more risk-sensitive than standardized haircuts, tend to substantially reduce the amount of the deductions to tentative net capital in comparison to the standardized haircuts because the models recognize more offsets between related positions than the standardized haircuts. Therefore, the Commission expects that stand-alone SBSBs that have the capability to use internal models to calculate net capital would choose to do so.

⁶⁰³ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25260

⁶⁰⁴ See *id.*

Of the 16 broker-dealer FCM SBSBs, the Commission estimates that ten firms will operate as ANC broker-dealer SBSBs, which use internal models to compute net capital under Rule 15c3-1.⁶⁰⁵

As of December 31, 2018, there were 3,764 broker-dealers registered with the Commission. The Commission estimates that 25 registered broker-dealers will be engaged in security-based swap activities but will not be required to register as an SBSB or MSBSP. Other than OTC derivatives dealers, which are subject to significant limitations on their activities, broker-dealers historically have not participated in a significant way in security-based swap trading for at least two reasons.⁶⁰⁶ First, because the Exchange Act has not previously defined security-based swaps as *securities*, security-based swaps have not been required to be traded through registered broker-dealers.⁶⁰⁷ Second, a broker-dealer engaging in security-based swap activities is currently subject to existing regulatory requirements with respect to those activities, including capital, margin, segregation, and recordkeeping requirements. The existing financial responsibility requirements make it more costly to conduct these activities in a broker-dealer than in an unregulated entity. As a result, security-based swap activities are mostly concentrated in affiliates of broker-dealers, not broker-dealers themselves.⁶⁰⁸

Finally, for purposes of estimating the number of respondents with respect to the amendments to Rule 3a71-6, applications for substituted compliance may be filed by foreign financial authorities, or by non-U.S. SBSBs or MSBSPs. Consistent with prior estimates, the Commission staff expects that there may be approximately 22 non-U.S. entities that may potentially register as SBSBs.⁶⁰⁹ Potentially, all such non-U.S. SBSBs, or some subset thereof, may seek to rely on substituted compliance in connection with the requirements

⁶⁰⁵ Currently, 5 broker-dealers are registered as ANC broker-dealers. The Commission has previously estimated that all current and future ANC broker-dealers will also register as SBSBs. See *Recordkeeping and Reporting Proposing Release; Capital Rule for Certain Security-Based Swap Dealers*, 79 FR at 25261.

⁶⁰⁶ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43960; *Recordkeeping and Reporting Proposing Release*, 79 FR at 25261.

⁶⁰⁷ See Section 761 of the Dodd-Frank Act (amending definition of “security” in Section 3 of the Exchange Act).

⁶⁰⁸ See International Swaps and Derivatives Association (“ISDA”), *Margin Survey 2015* (Aug. 2015) (“ISDA Margin Survey 2015”), available at <http://www2.isda.org/attachment/Nzc4MQ==/Margin%20survey%202015%20FINAL.pdf>. The ISDA Margin Survey is conducted annually to examine the state of collateral use and management among derivatives dealers and end-users. The appendix to the survey lists firms that responded to the survey, including broker-dealers. See *id.*

⁶⁰⁹ See *Trade Acknowledgment and Verification of Security-Based Swap Transactions*, 81 FR at 39832.

adopted in this document.⁶¹⁰ For purposes of this PRA, however, consistent with prior estimates, the Commission estimates that three of these security-based swap entities will submit such applications in connection with the Commission’s recordkeeping, reporting, and notification requirements.⁶¹¹

D. Total Initial and Annual Recordkeeping and Reporting Burden

1. Amendments to Rule 17a-3 and New Rule 18a-5

The amendments to Rule 17a-3 and new Rule 18a-5 will impose collection of information requirements that result in initial and annual burdens for broker-dealers, SBSBs, and MSBSPs. The Commission estimates that these amendments to Rule 17a-3 will impose the following initial and annual burdens:⁶¹²

Burden	Initial Burden	Annual Burden
New security-based swap records	<i>Per firm:</i> 70 hours <i>Industry:</i> 2,940 hours	<i>Per firm:</i> 42 hours <i>Industry:</i> 1,764 hours
New burdens applicable to broker-dealer SBSBs and MSBSPs	<i>Per firm:</i> 60 hours <i>Industry:</i> 1,020 hours	<i>Per firm:</i> 75 hours <i>Industry:</i> 1,275 hours
New burdens applicable to broker-dealer SBSBs	<i>Per firm:</i> 20 hours <i>Industry:</i> 320 hours	<i>Per firm:</i> 25 hours <i>Industry:</i> 400 hours
Total – Amendments to Rule 17a-3	<i>Industry:</i> 4,280 hours	<i>Industry:</i> 3,439 hours

The Commission estimates that new Rule 18a-5 will impose the following initial and annual burdens:⁶¹³

Burden	Initial Burden	Annual Burden
Burdens applicable to stand-alone SBSBs and MSBSPs	<i>Per firm:</i> 260 hours and \$1,000 <i>Industry:</i> 2,600 hours and \$10,000	<i>Per firm:</i> 325 hours and \$4,650 <i>Industry:</i> 3,250 hours and \$46,500
Burdens applicable to stand-alone SBSBs	<i>Per firm:</i> 60 hours <i>Industry:</i> 360 hours	<i>Per firm:</i> 75 hours <i>Industry:</i> 450 hours
Burdens applicable to bank SBSBs and MSBSPs	<i>Per firm:</i> 200 hours <i>Industry:</i> 5,000 hours	<i>Per firm:</i> 250 hours <i>Industry:</i> 6,250 hours
Burdens applicable to bank SBSBs	<i>Per firm:</i> 60 hours <i>Industry:</i> 1,500 hours	<i>Per firm:</i> 75 hours <i>Industry:</i> 1,875 hours
Total – New Rule 18a-5	<i>Industry:</i> 9,460 hours and \$10,000	<i>Industry:</i> 11,825 hours and \$46,500

Estimated Hours and Costs of Amendments to Rule 17a-3

⁶¹⁰ It is possible that some subset of MSBSPs will be non-U.S. MSBSPs and seek to rely on substituted compliance. *See Trade Acknowledgment and Verification of Security-Based Swap Transactions*, 81 FR at 39832.

⁶¹¹ *See id.* at 38392.

⁶¹² *See* paragraphs (a)(1) and (3), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), (a)(9)(iv), and (a)(25) through (30) of Rule 17a-3, as amended.

⁶¹³ *See* paragraphs (a)(1) through (10) and (12) through (17) and (b)(1) through (13) of Rule 18a-5, as adopted.

In the proposing release, the Commission estimated that many of the amendments to Rule 17a-3 are not expected to impose an initial burden.⁶¹⁴ The Commission received no comment on these estimates and continues to believe they are appropriate.

The Commission is amending Rule 17a-3 to require broker-dealers to make and keep current various records for security-based swaps.⁶¹⁵ The Commission estimates that these amendments will impose on each broker-dealer that engages in security-based swap activities an initial burden of 70 hours and an ongoing burden of approximately ten minutes per business day, or 42 hours per year.⁶¹⁶ The Commission estimates that there are 42 respondents.⁶¹⁷ Thus, the Commission estimates that the amendments will add to the industry an estimated initial burden of 2,940 hours⁶¹⁸ and an ongoing burden of 1,764 hours per year.⁶¹⁹

The amendments to Rule 17a-3 require three additional types of records to be made and kept current by broker-dealer SBSs and MSBSs.⁶²⁰ Because the burden to run the applicable calculation or comply with the applicable standard is accounted for in the PRA estimates for Rules 18a-3, 15Fi-2, 15Fh-1 through 15Fh-5, and 15Fk-1,⁶²¹ the burden imposed by these new requirements is the requirement to make and keep current a written record of these tasks. The Commission estimates that paragraphs (a)(25), (a)(28), and (a)(30) of Rule 17a-3, as amended, will impose an initial burden of 60 hours per firm and an ongoing annual burden of 75 hours per firm.

⁶¹⁴ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25262-63.

⁶¹⁵ See paragraphs (a)(1) and (3), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), (a)(9)(iv), and (a)(26) and (27) of Rule 17a-3, as amended.

⁶¹⁶ $(10 \text{ minutes per business day} \div 60 \text{ minutes per hour}) \times 251 \text{ business days per year} = 42 \text{ hours per year}$. There were 251 business days in 2018.

⁶¹⁷ 16 broker-dealer SBSs + 1 broker-dealer MSBS + 25 stand-alone broker-dealers engaged in security-based swap activities = 42 broker-dealers engaged in security-based swap activities.

⁶¹⁸ $70 \text{ hours per year} \times 42 \text{ broker-dealers engaged in security-based swap activities} = 2,940 \text{ hours per year}$. These internal hours likely will be performed by a compliance manager.

⁶¹⁹ $42 \text{ hours per year} \times 42 \text{ broker-dealers engaged in security-based swap activities} = 1,764 \text{ hours per year}$. These internal hours likely will be performed by a compliance clerk.

⁶²⁰ See paragraphs (a)(25), (28), and (30) of Rule 17a-3, as amended (adopting recordkeeping requirements for Rule 18a-3 calculations, unverified transactions, and compliance with business conduct requirements, respectively).

⁶²¹ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43963; *Trade Acknowledgment and Verification of Security-Based Swap Transactions*, 81 FR at 39807; *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 76 FR at 42443-48.

The Commission estimates that there are 17 respondents (16 broker-dealer SBSBs and 1 broker-dealer MSBSP), adding to the industry an initial burden of 1,020 hours⁶²² and an ongoing burden of 1,275 hours per year.⁶²³

The amendments to Rule 17a-3 require one additional type of record to be made and kept current by broker-dealer SBSBs.⁶²⁴ Because the burden to run the applicable calculation or comply with the applicable standard is accounted for in the PRA estimate for Rule 15Fh-6,⁶²⁵ the burden imposed by this requirement is the requirement to make and keep current a written record of these tasks. The Commission estimates that new paragraph (a)(29) of Rule 17a-3 will impose an initial burden of 20 hours per firm and an ongoing annual burden of 25 hours per firm. The Commission estimates that there are 16 broker-dealer SBSBs, adding to the industry an initial burden of 320 hours⁶²⁶ and an ongoing burden of 400 hours per year.⁶²⁷

The Commission received no comments regarding its hour and cost burden estimates for the amendments to Rule 17a-3. However, the estimated initial burden for Rule 17a-3 is increased to reflect that the requirements to make and keep possession or control and special reserve account computation records now apply to all broker-dealers engaged in security-based swap activities (instead of just broker-dealer SBSBs).⁶²⁸ Other than this change, the Commission continues to believe its hour and cost burden estimates for the amendments to Rule 17a-3 are appropriate.

Estimated Hours and Costs of New Rule 18a-5

⁶²² 60 hours x 17 broker-dealer SBSBs and MSBSPs = 1,020 hours. These internal hours likely will be performed by a compliance manager.

⁶²³ 75 hours per year x 17 broker-dealer SBSBs and MSBSPs = 1,275 hours per year. These internal hours likely will be performed by a compliance clerk.

⁶²⁴ See paragraph (a)(29) of Rule 17a-3, as amended (political contributions).

⁶²⁵ See *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR at 29959.

⁶²⁶ 20 hours x 16 broker-dealer SBSBs = 320 hours. These internal hours likely will be performed by a compliance manager.

⁶²⁷ 25 hours per year x 16 broker-dealer SBSBs = 400 hours per year. These internal hours likely will be performed by a compliance clerk.

⁶²⁸ See Rule 17a-3, as amended (paragraph (a)(26) (compliance with Rule 15c3-3(p) possession or control requirements); paragraph (a)(27) (Rule 15c3-3(p) reserve account computations)).

The Commission estimates that new Rule 18a-5 will cause a stand-alone SBSB or MSBSP to incur an initial dollar cost of approximately \$1,000 to purchase recordkeeping system software and an ongoing dollar cost of \$4,650 per year for associated equipment and systems development. The Commission estimates that there are 10 respondents (6 stand-alone SBSBs and 4 stand-alone MSBSPs), resulting in an estimated industry-wide initial burden of \$10,000⁶²⁹ and an industry-wide ongoing burden of \$46,500 per year.⁶³⁰

New Rule 18a-5 is not expected to increase the initial and ongoing dollar costs that bank SBSBs and MSBSPs incur to purchase recordkeeping system software and for equipment and systems development. Banks are already subject to recordkeeping requirements by their prudential regulators,⁶³¹ so they should already own or have established the requisite recordkeeping system software. Although bank SBSBs and MSBSPs may need to program the software to begin collecting additional records, the Commission expects these services to be performed in-house, and these hour burdens are estimated below.

New Rule 18a-5 requires 13 types of records to be made and kept current by stand-alone SBSBs and MSBSPs.⁶³² New Rule 18a-5 imposes the burden to make and keep current these records, but does not require the firm to perform the underlying task.⁶³³ Therefore, after consideration of the estimated burdens under Rule 17a-3, as amended, the Commission estimates that these 13 paragraphs will impose on each firm an initial burden of 260 hours and an ongoing annual burden of 325 hours. The Commission estimates that there are 10

⁶²⁹ \$1,000 x 10 stand-alone SBSBs and MSBSPs = \$10,000.

⁶³⁰ \$4,650 per year x 10 stand-alone SBSBs and MSBSPs = \$46,500 per year.

⁶³¹ *See, e.g.*, 12 CFR 12.3 (Department of Treasury); 12 CFR 219.21 through 219.24 (Federal Reserve); 12 CFR 344.4 (FDIC).

⁶³² *See* Rule 18a-5, as adopted (paragraph (a)(1) (trade blotters); paragraph (a)(2) (general ledgers); paragraph (a)(3) (ledgers of customer and non-customer accounts); paragraph (a)(4) (stock record); paragraph (a)(5) (memoranda of proprietary orders); paragraph (a)(6) (confirmations); paragraph (a)(7) (accountholder information); paragraph (a)(8) (options positions); paragraph (a)(9) (trial balances and computation of net capital); paragraph (a)(10) (associated person's application); paragraph (a)(12) (Rule 18a-3 calculations); paragraph (a)(15) (unverified transactions); paragraph (a)(17) (compliance with business conduct standards)).

⁶³³ In estimating the burden associated with Rules 18a-5 and 18a-6, as adopted, the Commission recognizes that entities that will register stand-alone SBSBs and MSBSPs likely make and keep some records today as a matter of routine business practice, but the Commission does not have information about the records that such entities currently keep. Therefore, the Commission assumes that these entities currently keep no records when it estimates the PRA burden for these entities.

respondents (6 stand-alone SBSBs and 4 stand-alone MSBSPs), resulting in an estimated industry-wide initial burden of 2,600 hours⁶³⁴ and an industry-wide ongoing annual burden of 3,250 hours.⁶³⁵

New Rule 18a-5 requires three types of records to be made and kept current by stand-alone SBSBs.⁶³⁶ Because the burden to run the applicable calculation or comply with the applicable standard is accounted for in the PRA estimates for Rules 18a-4 and 15Fh-6,⁶³⁷ the burden imposed by these new requirements is the requirement to make and keep current a written record of these tasks. The Commission estimates that these three paragraphs will impose an initial burden of 60 hours per firm and an ongoing annual burden of 75 hours per firm. The Commission estimates that there are 6 stand-alone SBSBs, resulting in an industry-wide initial burden of 360 hours⁶³⁸ and an industry-wide ongoing burden of 450 hours per year.⁶³⁹

New Rule 18a-5 requires ten types of records to be made and kept current by bank SBSBs and MSBSPs, all of which are limited to the firm's business as an SBSB or MSBSP.⁶⁴⁰ New Rule 18a-5 imposes the burden to make and keep current these records, but does not require the firm to perform the underlying task. Therefore, after consideration of the estimated burdens under Rule 17a-3, as amended, the Commission estimates that these ten paragraphs will impose on each firm an initial burden of 200 hours per firm and an ongoing burden of 250 hours per firm. The Commission estimates that there are 25 respondents (25 bank SBSBs and no bank

⁶³⁴ 260 hours x 10 stand-alone SBSBs and MSBSPs = 2,600 hours. These internal hours likely will be performed by a compliance manager.

⁶³⁵ 325 hours per year x 10 stand-alone SBSBs and MSBSPs = 3,250 hours per year. These internal hours likely will be performed by a compliance clerk.

⁶³⁶ See Rule 18a-5, as adopted (paragraph (a)(13) (compliance with Rule 18a-4 possession or control requirements); paragraph (a)(14) (Rule 18a-4 reserve account computations); and paragraph (a)(16) (political contributions)).

⁶³⁷ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43964-67; *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR at 29959.

⁶³⁸ 60 hours x 6 stand-alone SBSBs = 360 hours. These internal hours likely will be performed by a compliance manager.

⁶³⁹ 75 hours per year x 6 stand-alone SBSBs = 450 hours per year. These internal hours likely will be performed by a compliance clerk.

⁶⁴⁰ See Rule 18a-5, as adopted (paragraph (b)(1) (trade blotters); paragraph (b)(2) (ledgers for customer and non-customer accounts); paragraph (b)(3) (stock record); paragraph (b)(4) (memoranda of brokerage orders); paragraph (b)(5) (memoranda of proprietary orders); paragraph (b)(6) (confirmations); paragraph (b)(7) (account holder information); paragraph (b)(8) (associated person's application); paragraph (b)(11) (unverified transactions); and paragraph (b)(13) (compliance with business conduct requirements)).

MSBSPs), resulting in an estimated industry-wide initial burden of 5,000 hours⁶⁴¹ and an industry-wide ongoing burden of 6,250 hours per year.⁶⁴²

New Rule 18a-5 requires three types of records to be made and kept current by bank SBSBs, all of which are limited to the firm's business as an SBSB.⁶⁴³ Because the burden to run the applicable calculation or comply with the applicable standard is accounted for in the PRA estimates for Rules 18a-4 and 15Fh-6,⁶⁴⁴ the burden imposed by these new requirements is the requirement to make and keep current a written record of these tasks. The Commission estimates that these three paragraphs will impose an initial burden of 60 hours per firm and an ongoing annual burden of 75 hours per firm. The Commission estimates that there are 25 bank SBSBs, resulting in an industry-wide initial burden of 1,500 hours⁶⁴⁵ and an industry-wide ongoing burden of 1,875 hours per year.⁶⁴⁶

The Commission received no comments regarding its hour and cost burden estimates for new Rule 18a-5 and continues to believe they are appropriate.

Estimated Hours and Costs of the Limited Alternative Compliance Mechanism

As discussed above, the Commission is adopting the limited alternative compliance mechanism. The registrant's obligation to preserve these records will continue for the retention period specified for that category of record as set forth in Rule 17a-4 or Rule 18a-6, as applicable.

The Commission believes that registrants who choose to use the limited alternative compliance mechanism will incur lower costs and hour burdens, especially with respect to initial compliance burdens, than

⁶⁴¹ 200 hours x 25 bank SBSBs = 5,000 hours. These internal hours likely will be performed by a compliance manager.

⁶⁴² 250 hours per year x 25 bank SBSBs = 6,250 hours per year. These internal hours likely will be performed by a compliance clerk.

⁶⁴³ See Rule 18a-5, as adopted (paragraph (b)(9) (compliance with Rule 18a-4 possession or control requirements); paragraph (b)(10) (Rule 18a-4 reserve account computations); and paragraph (b)(12) (political contributions)).

⁶⁴⁴ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43964-67; *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR at 29959.

⁶⁴⁵ 60 hours x 25 bank SBSBs = 1,500 hours. These internal hours likely will be performed by a compliance manager.

⁶⁴⁶ 75 hours per year x 25 bank SBSBs = 1,875 hours per year. These internal hours likely will be performed by a compliance clerk.

they would pursuant to the standard compliance requirements. Indeed, were that not the case, registrants would be unlikely to use the limited alternative compliance mechanism. However, for purposes of this Paperwork Reduction Act analysis, the Commission is making the conservative estimate that no firms will utilize the limited alternative compliance mechanism.

2. Amendments to Rule 17a-4 and New Rule 18a-6

The amendments to Rule 17a-4 and new Rule 18a-6 impose collection of information requirements that will result in initial and ongoing burdens for broker-dealers, SBSBs, MSBSPs, and certain third-party custodians. The Commission estimates that the amendments to Rule 17a-4 will impose the following initial and annual burdens:⁶⁴⁷

Burden	Initial Burden	Annual Burden
Recorded telephone calls	<i>Per firm:</i> 13 hours <i>Industry:</i> 221 hours	<i>Per firm:</i> 6 hours and \$2,000 <i>Industry:</i> 102 hours and \$34,000
New burdens applicable to all broker-dealers	<i>Per firm:</i> 65 hours <i>Industry:</i> 2,730 hours	<i>Per firm:</i> 30 hours and \$600 <i>Industry:</i> 1,260 hours and \$25,200
New burdens applicable to broker-dealer SBSBs and MSBSPs	<i>Per firm:</i> 65 hours <i>Industry:</i> 1,105 hours	<i>Per firm:</i> 30 hours and \$600 <i>Industry:</i> 510 hours and \$10,200
New burdens applicable to broker-dealer SBSBs	<i>Per firm:</i> 13 hours <i>Industry:</i> 208 hours	<i>Per firm:</i> 6 hours and \$120 <i>Industry:</i> 96 hours and \$1,920
Total – Amendments to Rule 17a-4	<i>Industry:</i> 4,264 hours	<i>Industry:</i> 1,968 hours and \$40,720

The Commission estimates that new Rule 18a-6 will impose the following initial and annual burdens:⁶⁴⁸

Burden	Initial Burden	Annual Burden
Burdens applicable to stand-alone SBSBs and MSBSPs	<i>Per firm:</i> 364 hours <i>Industry:</i> 3,640 hours	<i>Per firm:</i> 280 hours and \$5,720 <i>Industry:</i> 2,800 hours and \$57,200
Burdens applicable to stand-alone SBSBs	<i>Per firm:</i> 44 hours <i>Industry:</i> 264 hours	<i>Per firm:</i> 30 hours and \$360 <i>Industry:</i> 180 hours and \$2,160
Burdens applicable to model stand-alone SBSBs	<i>Per firm:</i> 18 hours <i>Industry:</i> 72 hours	<i>Per firm:</i> 10 hours and \$120 <i>Industry:</i> 40 hours and \$480
Burdens applicable to bank SBSBs and MSBSPs	<i>Per firm:</i> 247 hours <i>Industry:</i> 6,175 hours	<i>Per firm:</i> 190 hours and \$4,520 <i>Industry:</i> 4,750 hours and \$113,000
Burdens applicable to bank SBSBs	<i>Per firm:</i> 57 hours <i>Industry:</i> 1,425 hours	<i>Per firm:</i> 40 hours and \$480 <i>Industry:</i> 1,000 hours and \$12,000
Burdens applicable to third-party custodians	<i>Per firm:</i> 0 hours <i>Industry:</i> 0 hours	<i>Per firm:</i> 2 hours <i>Industry:</i> 35 hours
Total – New Rule 18a-6	<i>Industry:</i> 11,576 hours	<i>Industry:</i> 8,805 hours and \$184,840

Estimated Hours and Costs of Amendments to Rule 17a-4

⁶⁴⁷ See paragraphs (b)(1) and (4), (b)(8)(v) through (viii) and (xvi), and (b)(14), (15), and (16) of Rule 17a-4, as amended

⁶⁴⁸ See paragraphs (a)(1) and (2), (b)(1)(i) through (xiii), (b)(2)(i) through (viii), (c), (d)(1), (d)(2)(i) and (ii), (d)(3)(i) and (ii), and (f) of Rule 18a-6, as adopted.

In the proposing release, the Commission estimated that many of the amendments to Rule 17a-4 are not expected to impose an initial burden.⁶⁴⁹ The Commission received no comment on these estimates and continues to believe they are appropriate.

The Commission is amending Rule 17a-4 to require broker-dealer SBSs and MSBSs to retain telephone calls that are already recorded and are related to the broker-dealer SBS's and broker-dealer MSBS's business as such.⁶⁵⁰ Because the retention of telephonic recordings is only required if the broker-dealer SBS or broker-dealer MSBS voluntarily chooses to record, the Commission's burden estimate does not include the cost of recording phone calls. Therefore, the burdens imposed by the amendment will be to provide adequate physical space and computer hardware and software for storage. The Commission estimates that the amendment will impose an initial burden of 13 hours per firm. The Commission estimates that there are 17 respondents (16 broker-dealer SBSs and 1 broker-dealer MSBS), resulting in an estimated industry-wide initial burden of 221 hours.⁶⁵¹

The Commission estimates that each firm will incur an annual burden of approximately 6 hours to confirm that telephonic communications are being retained in accordance with Rule 17a-4, and approximately \$2,000 for server, equipment, and systems development costs. The Commission estimates that there are 17 respondents (16 broker-dealer SBSs and 1 broker-dealer MSBS), resulting in an estimated industry-wide ongoing annual cost of 102 hours⁶⁵² and \$34,000.⁶⁵³

The amendments to Rule 17a-4 add five types of records to be preserved by broker-dealers.⁶⁵⁴ Because the burden to create these records is already accounted for in the PRA estimates for Rule 17a-3, Rule 15c3-1, or

⁶⁴⁹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25266.

⁶⁵⁰ See paragraph (b)(4) of Rule 17a-4, as amended.

⁶⁵¹ 13 hours x 17 broker-dealer SBSs and MSBSs = 221 hours. These internal hours likely will be performed by a senior database administrator.

⁶⁵² 6 hours x 17 broker-dealer SBSs and MSBSs = 102 hours. These internal hours likely will be performed by a compliance clerk.

⁶⁵³ \$2,000 x 17 broker-dealer SBSs and MSBSs = \$34,000.

⁶⁵⁴ See Rule 17a-4, as amended (paragraph (b)(1) (cross-referencing paragraph (a)(26) of Rule 17a-3, as amended (compliance with possession or control requirements for security-based swap customers); paragraph (a)(27) of Rule 17a-3, as amended

Regulation SBSR,⁶⁵⁵ the Commission estimates that these amendments will impose an initial burden of 65 hours per firm and an ongoing annual burden of 30 hours and \$600 per firm.⁶⁵⁶ The Commission estimates that there are 42 respondents – 16 broker-dealer SBSBs, 1 broker-dealer MSBSP, and 25 stand-alone broker-dealers engaged in security-based swap activities.⁶⁵⁷ Thus, these amendments will add to the industry an estimated initial burden of 2,730 hours⁶⁵⁸ and an ongoing annual burden of 1,260 hours⁶⁵⁹ and \$25,200.⁶⁶⁰

The amendments to Rule 17a-4 add five types of records to be preserved by broker-dealer SBSBs and MSBSPs.⁶⁶¹ Because the burden to create these records is accounted for in the PRA estimates for Rule 17a-3 or for Rules 15Fh-1 through 15Fh-5 and 15Fk-1,⁶⁶² the Commission estimates that these amendments will impose an initial burden of 65 hours per firm and an ongoing annual burden of 30 hours and \$600 per firm. The Commission estimates that there are 17 respondents (16 broker-dealer SBSBs and 1 broker-dealer MSBSP),

(Rule 18a-4 reserve account computations)); paragraph (b)(8)(v) through (viii) (identifying information about swaps); paragraph (b)(8)(xvi) (risk margin calculation); and paragraph (b)(14) (Regulation SBSR information)).

⁶⁵⁵ See Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-3* (Oct. 19, 2016), available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=68827501>; Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 15c3-1* (May 26, 2017), available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=74206901>; *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 81 FR 53545.

⁶⁵⁶ Unless otherwise noted, the estimates for this rule consider the burden of providing adequate physical space and computer hardware and software for storage, preserving these records for the requisite time period, and producing them when requested.

⁶⁵⁷ 16 broker-dealer SBSBs + 1 broker-dealer MSBSP + 25 stand-alone broker-dealers engaged in security-based swap activities = 42 broker-dealers engaged in security-based swap activities.

⁶⁵⁸ 65 hours x 42 respondents = 2,730 hours. These internal hours likely will be performed by a senior database administrator.

⁶⁵⁹ 30 hours per year x 42 respondents = 1,260 hours per year. These internal hours likely will be performed by a compliance clerk.

⁶⁶⁰ \$600 x 42 respondents = \$25,200.

⁶⁶¹ See Rule 17a-4, as amended (paragraph (b)(1), cross-referencing paragraph (a)(25) of Rule 17a-3, as amended (Rule 18a-3 calculations); paragraph (b)(1), cross-referencing paragraph (a)(28) of Rule 17a-3, as amended (unverified transactions); paragraph (b)(1), cross-referencing paragraph (a)(30) of Rule 17a-3, as amended (compliance with business conduct standards); paragraph (b)(15) (documents and notices related to the business conduct standards); and paragraph (b)(16) (special entity documents).

⁶⁶² See Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-3*; section IV.D.1. of this release; *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR at 29959.

adding to the industry an initial burden of 1,105 hours⁶⁶³ and an ongoing annual burden of 510 hours⁶⁶⁴ and \$10,200.⁶⁶⁵

The amendments to Rule 17a-4 add one type of record to be preserved by broker-dealer SBSBs.⁶⁶⁶ Because the burden to create this record is accounted for in the PRA estimate for Rule 17a-3, as amended,⁶⁶⁷ the Commission estimates that the amendment will impose an initial burden of 13 hours per firm and an ongoing annual burden of 6 hours and \$120 per firm. The Commission estimates that there are 16 broker-dealer SBSBs, adding to the industry an initial burden of 208 hours,⁶⁶⁸ and an ongoing annual burden of 96 hours⁶⁶⁹ and \$1,920.⁶⁷⁰

The Commission received no comments regarding its hour and cost burden estimates for the amendments to Rule 17a-4. However, the estimated burden for Rule 17a-4 is increased to reflect that the requirements to make and keep possession or control and special reserve account computation records now apply to all broker-dealers engaged in security-based swap activities (instead of just broker-dealer SBSBs).⁶⁷¹ Other than this change, the Commission continues to believe its hour and cost burden estimates for the amendments to Rule 17a-3 are appropriate.

⁶⁶³ 65 hours x 17 broker-dealer SBSBs and MSBSPs = 1,105 hours. These internal hours likely will be performed by a senior database administrator.

⁶⁶⁴ 30 hours per year x 17 broker-dealer SBSBs and MSBSPs = 510 hours per year. These internal hours likely will be performed by a compliance clerk.

⁶⁶⁵ \$600 x 17 broker-dealer SBSBs and MSBSPs = \$10,200.

⁶⁶⁶ See paragraph (b)(1) of Rule 17a-4, as amended (cross-referencing paragraph (a)(29) of Rule 17a-3, as amended (political contributions)).

⁶⁶⁷ See section IV.D.1. of this release.

⁶⁶⁸ 13 hours x 16 broker-dealer SBSBs = 208 hours. These internal hours likely will be performed by a senior database administrator.

⁶⁶⁹ 6 hours per year x 16 broker-dealer SBSBs = 96 hours per year. These internal hours likely will be performed by a compliance clerk.

⁶⁷⁰ \$120 x 16 broker-dealer SBSBs = \$1,920.

⁶⁷¹ See paragraph (b)(1) of Rule 17a-3, as amended (cross-referencing paragraph (a)(26) (compliance with Rule 15c3-3(p) possession or control requirements); paragraph (a)(27) (Rule 15c3-3(p) reserve account computations)).

Estimated Hours and Costs of New Rule 18a-6

New Rule 18a-6 requires 27 types of records to be preserved by stand-alone SBSBs and MSBSPs.⁶⁷²

The Commission estimates that the record preservation requirements applicable to stand-alone SBSBs and MSBSPs will impose an initial burden of 364 hours⁶⁷³ and an ongoing annual burden of 280 hours and \$5,720 per firm. The Commission estimates that there are 10 respondents (6 stand-alone SBSBs and 4 stand-alone MSBSPs), resulting in an estimated industry-wide initial burden of 3,640 hours,⁶⁷⁴ and an industry-wide ongoing annual burden of 2,800 hours⁶⁷⁵ and \$57,200.⁶⁷⁶

New Rule 18a-6 requires three types of records to be preserved by stand-alone SBSBs.⁶⁷⁷ The Commission estimates that the relevant portions of paragraph (b)(1)(i) of new Rule 18a-6 will impose an initial

⁶⁷² See Rule 18a-6, as adopted (paragraph (a)(1), cross-referencing paragraph (a)(1) of Rule 18a-5, as adopted (trade blotters); paragraph (a)(1), cross-referencing paragraph (a)(2) of Rule 18a-5, as adopted (general ledgers); paragraph (a)(1), cross-referencing paragraph (a)(3) of Rule 18a-5, as adopted (ledgers of customer and non-customer accounts); paragraph (a)(1), cross-referencing paragraph (a)(4) of Rule 18a-5, as adopted (stock record); paragraph (b)(1)(i), cross-referencing paragraph (a)(5) of Rule 18a-5, as adopted (memoranda of proprietary orders); paragraph (b)(1)(i), cross-referencing paragraph (a)(6) of Rule 18a-5, as adopted (confirmations); paragraph (b)(1)(i), cross-referencing paragraph (a)(7) of Rule 18a-5, as adopted (accountholder information); paragraph (b)(1)(i), cross-referencing paragraph (a)(8) of Rule 18a-5, as adopted (options positions); paragraph (b)(1)(i), cross-referencing paragraph (a)(9) of Rule 18a-5, as adopted (trial balances and computation of net capital); paragraph (b)(1)(i), cross-referencing paragraph (a)(12) of Rule 18a-5, as adopted (Rule 18a-3 calculations); paragraph (b)(1)(i), cross-referencing paragraph (a)(15) of Rule 18a-5, as adopted (unverified transactions); paragraph (b)(1)(i), cross-referencing paragraph (a)(17) of Rule 18a-5, as adopted (compliance with business conduct standards); paragraph (b)(1)(ii) (bank records); paragraph (b)(1)(iii) (bills); paragraph (b)(1)(iv) (communications); paragraph (b)(1)(v) (trial balances); paragraph (b)(1)(vi) (account documents); paragraph (b)(1)(vii) (written agreements); paragraph (b)(1)(viii) (information supporting financial reports); paragraph (b)(1)(ix) (Rule 15c3-4 risk management records); paragraph (b)(1)(xi) (Regulation SBSR information); paragraph (b)(1)(xii) (records relating to business conduct standards); paragraph (b)(1)(xiii) (special entity documents); paragraph (c) (corporate documents); paragraph (d)(1) (associated person's employment application); paragraph (d)(2)(i) (regulatory authority reports); and paragraph (d)(3)(i) (compliance, supervisory, and procedures manuals)). Unless otherwise noted, new Rule 18a-6 does not require firms to create records or perform the underlying task, so the estimates for this rule consider the burden of providing adequate physical space and computer hardware and software for storage, preserving these records for the requisite time period, and producing them when requested.

⁶⁷³ The Commission believes that any initial dollar cost associated with Rule 18a-6, as adopted, is already accounted for in the PRA estimate for Rule 18a-5, as adopted, which includes the cost of recordkeeping system software.

⁶⁷⁴ 364 hours x 10 stand-alone SBSBs and MSBSPs = 3,640 hours. These internal hours likely will be performed by a senior database administrator.

⁶⁷⁵ 280 hours per year x 10 stand-alone SBSBs and MSBSPs = 2,800 hours per year. These internal hours likely will be performed by a compliance clerk.

⁶⁷⁶ \$5,720 per year x 10 stand-alone SBSBs and MSBSPs = \$57,200 per year.

⁶⁷⁷ See paragraph (b)(1)(i) of Rule 18a-6, as adopted (cross-referencing paragraph (a)(13) of Rule 18a-5, as adopted (compliance with Rule 18a-4 possession or control requirements); paragraph (a)(14) of Rule 18a-5, as adopted (Rule 18a-4 reserve account computations); and paragraph (a)(16) of Rule 18a-5, as adopted (political contributions)). The burden to create these records is accounted for in the PRA estimate for new Rule 18a-5. See section IV.D.1. of this release.

burden of 44 hours per firm,⁶⁷⁸ and an ongoing annual burden of 30 hours and \$360 per firm. The Commission estimates that there are 6 stand-alone SBSBs, resulting in an industry-wide initial burden of 264 hours⁶⁷⁹ and an industry-wide ongoing annual burden of 180 hours⁶⁸⁰ and \$2,160.⁶⁸¹

New Rule 18a-6 requires one type of record to be preserved by stand-alone SBSBs authorized to use models to compute capital.⁶⁸² The Commission estimates that paragraph (b)(1)(x) will impose an initial burden of 18 hours⁶⁸³ and an ongoing annual burden of ten hours and \$120 per stand-alone SBSB authorized to use models. The Commission estimates that there are 4 stand-alone SBSBs authorized to use models to compute capital, resulting in an industry-wide initial burden of 72 hours⁶⁸⁴ and an industry-wide ongoing annual burden of 40 hours⁶⁸⁵ and \$480.⁶⁸⁶

New Rule 18a-6 requires 18 types of records to be preserved by bank SBSBs and MSBSPs, all of which are limited to the firm's business as an SBSB or MSBSP.⁶⁸⁷ After consideration of the similar burdens imposed

⁶⁷⁸ The Commission believes that any initial dollar cost associated with Rule 18a-6, as adopted, is already accounted for in the PRA estimate for Rule 18a-5, as adopted, which includes the cost of recordkeeping system software.

⁶⁷⁹ 44 hours x 6 stand-alone SBSBs = 264 hours. These internal hours likely will be performed by a senior database administrator.

⁶⁸⁰ 30 hours per year x 6 stand-alone SBSBs = 180 hours per year. These internal hours likely will be performed by a compliance clerk.

⁶⁸¹ \$360 per year x 6 stand-alone SBSBs = \$2,160 per year.

⁶⁸² See Rule 18a-6, as adopted (paragraph (b)(1)(x) (credit risk determinations)). The burden of actually performing the underlying task and creating the written record is already accounted for in the PRA estimate for Rule 18a-1. See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43961-63.

⁶⁸³ The Commission believes that any initial dollar cost associated with new Rule 18a-6 is already accounted for in the PRA estimate for Rule 18a-5, as adopted, which includes the cost of recordkeeping system software.

⁶⁸⁴ 18 hours x 4 model stand-alone SBSBs = 72 hours. These internal hours likely will be performed by a senior database administrator.

⁶⁸⁵ 10 hours per year x 4 model stand-alone SBSBs = 40 hours per year. These internal hours likely will be performed by a compliance clerk.

⁶⁸⁶ \$120 per year x 4 model stand-alone SBSBs = \$480 per year.

⁶⁸⁷ See Rule 18a-6, as adopted (paragraph (a)(2), cross-referencing paragraph (b)(1) of Rule 18a-5, as adopted (trade blotters); paragraph (a)(2), cross-referencing paragraph (b)(2) of Rule 18a-5, as adopted (ledgers of security-based swap customers and non-customers); paragraph (a)(2), cross-referencing paragraph (b)(3) of Rule 18a-5, as adopted (stock records); paragraph (b)(2)(i), cross-referencing paragraph (b)(4) of Rule 18a-5, as adopted (memoranda of brokerage orders); paragraph (b)(2)(i), cross-referencing paragraph (b)(5) of Rule 18a-5, as adopted (memoranda of proprietary orders); paragraph (b)(2)(i), cross-referencing paragraph (b)(6) of Rule 18a-5, as adopted (confirmations); paragraph (b)(2)(i), cross-referencing paragraph (b)(7) of Rule 18a-5, as adopted (account holder information); paragraph (b)(2)(i), cross-referencing paragraph (b)(11) of Rule 18a-5, as adopted (unverified transactions); paragraph (b)(2)(i), cross-referencing paragraph (b)(13) of Rule 18a-5, as adopted (compliance with external business conduct requirements); paragraph (b)(2)(ii) (communications); paragraph

by Rule 17a-4, as amended, the Commission estimates that new Rule 18a-6 will impose on bank SBSBs and MSBSPs an initial burden of 247 hours per firm⁶⁸⁸ and an ongoing burden of 190 hours and \$4,520 per firm. The Commission estimates that there are 25 respondents (25 bank SBSBs and no bank MSBSPs), resulting in an estimated industry-wide initial burden of 6,175 hours⁶⁸⁹ and an industry-wide ongoing annual burden of 4,750 hours⁶⁹⁰ and \$113,000.⁶⁹¹

New Rule 18a-6 requires four types of records to be preserved by bank SBSBs, all of which are limited to the firm's business as an SBSB.⁶⁹² The Commission estimates that paragraphs (b)(2)(i) and (v) of new Rule 18a-6 will impose an initial burden of 57 hours per firm⁶⁹³ and an ongoing annual burden of 40 hours and \$480 per firm. The Commission estimates that there are 25 bank SBSBs, resulting in an industry-wide initial burden of 1,425 hours⁶⁹⁴ and an industry-wide ongoing annual burden of 1,000 hours⁶⁹⁵ and \$12,000.⁶⁹⁶

Paragraph (f) of new Rule 18a-6 requires third-party custodians for non-broker-dealer SBSBs and non-broker-dealer MSBSPs to file with the Commission a written undertaking and surrender the SBSB or MSBSP's

(b)(2)(iii) (account documents); paragraph (b)(2)(iv) (written agreements); paragraph (b)(2)(vi) (Regulation SBSR information); paragraph (b)(2)(vii) (records relating to business conduct standards); paragraph (b)(2)(viii) (special entity documents); paragraph (d)(1) (associated person's employment application); paragraph (d)(2)(ii) (regulatory authority reports); paragraph (d)(3)(ii) (compliance, supervisory, and procedures manuals)).

⁶⁸⁸ The Commission believes that any initial dollar cost associated with Rule 18a-6, as adopted, is already accounted for in the PRA estimate for Rule 18a-5, as adopted, which includes the cost of recordkeeping system software.

⁶⁸⁹ 247 hours x 25 bank SBSBs = 6,175 hours. These internal hours likely will be performed by a senior database administrator.

⁶⁹⁰ 190 hours per year x 25 bank SBSBs = 4,750 hours per year. These internal hours likely will be performed by a compliance clerk.

⁶⁹¹ \$4,520 per year x 25 bank SBSBs = \$113,000 per year.

⁶⁹² See Rule 18a-6, as adopted (paragraph (b)(2)(i), cross-referencing paragraph (b)(9) (compliance with Rule 18a-4 possession or control requirements) of Rule 18a-5, as adopted; paragraph (b)(2)(i), cross-referencing paragraph (b)(10) (Rule 18a-4 reserve account computations) of Rule 18a-5, as adopted; paragraph (b)(2)(i), cross-referencing paragraph (b)(12) (political contributions) of Rule 18a-5, as adopted; and paragraph (b)(2)(v) (Rule 18a-4 reserve account computations)). The burden to perform the underlying task or create these records is accounted for in the PRA estimates for new Rules 18a-4 and 18a-5. See *Capital, Margin, and Segregation Adopting Release*, 84FR at 43964-67; section IV.D.1. of this release.

⁶⁹³ The Commission believes that any initial dollar cost associated with new Rule 18a-6 is already accounted for in the PRA estimate for Rule 18a-5, as adopted, which includes the cost of recordkeeping system software.

⁶⁹⁴ 57 hours x 25 bank SBSBs = 1,425 hours. These internal hours likely will be performed by a compliance manager and a senior database administrator.

⁶⁹⁵ 40 hours per year x 25 bank SBSBs = 1,000 hours per year. These internal hours likely will be performed by a compliance clerk.

⁶⁹⁶ \$480 per year x 25 bank SBSBs = \$12,000 per year.

records upon the Commission’s request.⁶⁹⁷ The obligation to provide documents upon the Commission’s request does not impose a new burden, since this requirement merely changes the respondent’s identity rather than adding to the quantity of burdens. Thus, the burden is the requirement to prepare and file a written undertaking. The Commission estimates that 50% of the 35 non-broker-dealer SBSBs and non-broker-dealer MSBSPs will retain a third-party custodian, resulting in approximately 17.5 written undertakings. The Commission estimates that paragraph (f) of new Rule 18a-6 will impose an ongoing annual burden of 2 hours per written undertaking, resulting in an industry-wide ongoing burden of 35 hours per year.⁶⁹⁸

The Commission received no comments regarding its hour and cost burden estimates for new Rule 18a-6 and continues to believe they are appropriate.

3. Amendments to Rule 17a-5 and New Rule 18a-7

The amendments to Rule 17a-5 and new Rule 18a-7 will impose collection of information requirements that result in annual burdens for broker-dealers, SBSBs, and MSBSPs. The Commission estimates that the amendments to Rule 17a-5 will impose the following initial and annual burdens.⁶⁹⁹

Burden	Initial Burden	Annual Burden
FOCUS Report Part II (ANC broker-dealer SBSBs)	<i>Per firm:</i> 25 hours <i>Industry:</i> 250 hours	<i>Per firm:</i> 228 hours <i>Industry:</i> 2,280 hours
FOCUS Report Part II (non-model broker-dealer SBSBs)	<i>Per firm:</i> 50 hours <i>Industry:</i> 300 hours	<i>Per firm:</i> 240 hours <i>Industry:</i> 1,440 hours
FOCUS Report Part II (broker-dealer MSBSPs)	<i>Per firm:</i> 35 hours <i>Industry:</i> 35 hours	<i>Per firm:</i> 204 hours <i>Industry:</i> 204 hours
FOCUS Report Part II (stand-alone broker-dealers engaged in security-based swap activities)	<i>Per firm:</i> 20 hours <i>Industry:</i> 500 hours	<i>Per firm:</i> 120 hours <i>Industry:</i> 3,000 hours
Total – Amendments to Rule 17a-5	<i>Industry:</i> 1,085 hours	<i>Industry:</i> 6,924 hours

The Commission estimates that Rule 18a-7 will impose the following initial and annual burdens:⁷⁰⁰

Burden	Initial Burden	Annual Burden
Additional ANC reports	<i>Per firm:</i> 0 hours <i>Industry:</i> 0 hours	<i>Per firm:</i> 120 hours <i>Industry:</i> 480 hours
Customer statements	<i>Per firm:</i> 10 hours <i>Industry:</i> 100 hours	<i>Per firm:</i> 1 hours <i>Industry:</i> 10 hours

⁶⁹⁷ See paragraph (f) of Rule 18a-6, as adopted.

⁶⁹⁸ 2 hours per year x 17.5 written undertakings = 35 hours per year. These internal hours likely will be performed by an attorney.

⁶⁹⁹ See paragraph (a)(1)(ii) of Rule 17a-5, as amended.

⁷⁰⁰ See paragraphs (a)(1) through (3), (b), (c), (d), (e), (f), and (i) of Rule 18a-7, as adopted.

Annual report (stand-alone SBSBs not exempt from Rule 18a-4)	<i>Per firm:</i> 0 hours <i>Industry:</i> 0 hours	<i>Per firm:</i> 70 hours and \$6.70 <i>Industry:</i> 0 hours and \$0
Annual report (stand-alone SBSBs exempt from Rule 18a-4)	<i>Per firm:</i> 0 hours <i>Industry:</i> 0 hours	<i>Per firm:</i> 17 hours and \$6.70 <i>Industry:</i> 102 hours and \$40.2
Annual report (stand-alone MSBSPs)	<i>Per firm:</i> 0 hours <i>Industry:</i> 0 hours	<i>Per firm:</i> 10 hours and \$6.70 <i>Industry:</i> 40 hours and \$26.80
Statement regarding accountant	<i>Per firm:</i> 10 hours <i>Industry:</i> 100 hours	<i>Per firm:</i> 2 hours and 50¢ <i>Industry:</i> 20 hours and \$5.00
Engagement of accountant (stand-alone SBSBs not exempt from Rule 18a-4)	<i>Per firm:</i> 0 hours <i>Industry:</i> 0 hours	<i>Per firm:</i> \$450,000 <i>Industry:</i> \$0
Engagement of accountant (stand-alone SBSBs exempt from Rule 18a-4)	<i>Per firm:</i> 0 hours <i>Industry:</i> 0 hours	<i>Per firm:</i> \$303,000 <i>Industry:</i> \$1,818,000
Engagement of accountant (stand-alone MSBSPs)	<i>Per firm:</i> 0 hours <i>Industry:</i> 0 hours	<i>Per firm:</i> \$300,000 <i>Industry:</i> \$1,200,000
Notice of change of fiscal year	<i>Per firm:</i> 0 hours <i>Industry:</i> 0 hours	<i>Per firm:</i> 1 hour and 50¢ <i>Industry:</i> 1 hour and 50¢
FOCUS Report Part II (stand-alone SBSBs)	<i>Per firm:</i> 160 hours <i>Industry:</i> 960 hours	<i>Per firm:</i> 192 hours <i>Industry:</i> 1,152 hours
FOCUS Report Part II (stand-alone MSBSPs)	<i>Per firm:</i> 40 hours <i>Industry:</i> 160 hours	<i>Per firm:</i> 48 hours <i>Industry:</i> 192 hours
FOCUS Report Part IIC (bank SBSBs)	<i>Per firm:</i> 36 hours <i>Industry:</i> 900 hours	<i>Per firm:</i> 16 hours <i>Industry:</i> 400 hours
Total – New Rule 18a-7	<i>Industry:</i> 2,220 hours	<i>Industry:</i> 2,397 hours and \$3,018,072.5

Estimated Hours and Costs of Amendments to Rule 17a-5

In the proposing release, the Commission estimated that many of the amendments to Rule 17a-5 are not expected to impose an initial burden.⁷⁰¹ The Commission received no comment on these estimates and continues to believe they are appropriate.

Paragraph (a)(1)(ii) of Rule 17a-5, as amended, will require broker-dealer SBSBs and MSBSPs to file FOCUS Report Part II, as amended, monthly instead of filing the applicable part of the FOCUS Report quarterly.⁷⁰² Part II, Part IIA, and Part II CSE of the FOCUS Report each impose a different burden on respondents due to their varying lengths and calculations, so the burden of filing FOCUS Report Part II, as amended, depends on which part of the FOCUS Report the firm is currently required to file.

⁷⁰¹ See *Recordkeeping and Reporting Proposing Release*, 79 FR at 25270. The Commission does not estimate a change in the burden associated with the new lines added to the FOCUS Report, as compared with Form SBS in the proposing release, because the addition of new lines is offset by the deletion of other lines, such as the deletion of lines in the Statement of Income (Loss) or Statement of Comprehensive Income, as Applicable. In addition, many of the new lines are not so much new burdens as different burdens, since in the absence of these new lines, firms would still be required to report this same information, except that it would be reported on a different line. For example, in the Statement of Financial Condition, excess cash collateral pledged on derivative transactions (Line 6) is currently reported under other assets (Line 15).

⁷⁰² See paragraph (a)(1)(ii) of Rule 17a-5, as amended.

ANC broker-dealer SBSBs will be required to file FOCUS Report Part II, as amended, instead of FOCUS Report Part II CSE. Although FOCUS Report Part II, as amended, is modeled on Part II CSE, the burden on ANC broker-dealer SBSBs will increase, because ANC broker-dealer SBSBs will be required to complete additional sections and line items eliciting more detail about their security-based swap and swap activities.⁷⁰³ In consideration of these additional requirements, the Commission estimates that the requirement for ANC broker-dealer SBSBs to file FOCUS Report Part II, as amended, every month will add an initial burden of 25 hours per firm and an ongoing annual burden of 228 hours per firm. The Commission estimates that there are ten ANC broker-dealer SBSBs, adding to the industry an initial burden of 250 hours⁷⁰⁴ and an ongoing burden of 2,280 hours per year.⁷⁰⁵

Non-model broker-dealer SBSBs will be required to file FOCUS Report Part II, as amended, instead of Part II or Part IIA of the FOCUS Report. Given that SBSBs are expected to be larger and relatively sophisticated firms, the Commission assumes that all non-model broker-dealer SBSBs are carrying firms that file Part II. Although sections of Part II are also found in FOCUS Report Part II, as amended, the burden on non-model broker-dealer SBSBs will increase (but not as much as for ANC broker-dealer SBSBs), because non-model broker-dealer SBSBs will be required to file monthly instead of quarterly and will complete additional sections and line items eliciting more detail about their security-based swap and swap activities.⁷⁰⁶

⁷⁰³ ANC broker-dealer SBSBs will be required to complete the following new sections: (1) Computation for Determination of Security-Based Swap Customer Reserve Requirements; (2) Possession or Control for Security-Based Swap Customers; (3) Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions; and (4) Schedule 4 – Geographic Distribution of Derivatives Exposures for Ten Largest Countries.

⁷⁰⁴ 25 hours x 10 ANC broker-dealer SBSBs = 250 hours. These internal hours likely will be performed by a compliance manager.

⁷⁰⁵ 228 hours per year x 10 ANC broker-dealer SBSBs = 2,280 hours per year. These internal hours likely will be performed by a compliance manager.

⁷⁰⁶ Non-model broker-dealer SBSBs will be required to complete the following new sections: (1) Financial and Operational Data – Operational Deductions from Capital – Note A; (2) Financial and Operational Data – Potential Operational Charges Not Deducted from Capital – Note B; (3) Computation for Determination of PAB Requirements; (4) Computation for Determination of Security-Based Swap Customer Reserve Requirements; (5) Possession or Control for Security-Based Swap Customers; (6) Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions; (7) Schedule 2 – Credit Concentration Report for Fifteen Largest Current Exposures in Derivatives; (8) Schedule 3 – Portfolio Summary of Derivatives Exposures by Internal Credit Rating; and (9) Schedule 4 – Geographic Distribution of Derivatives Exposures for Ten Largest Countries. In addition, non-model broker-dealer SBSBs also registered as FCMs will be required to file the following sections not included on Pre-Amendment FOCUS Report Part II, but which the CFTC already requires FCMs to file as part of Form 1-

In consideration of these additional requirements, the Commission estimates that the requirement for non-model broker-dealer SBSBs to file FOCUS Report Part II, as amended, every month will add an initial burden of 50 hours per firm and an ongoing annual burden of 240 hours per firm. The Commission estimates that there are 6 non-model broker-dealer SBSBs, adding to the industry an initial burden of 300 hours⁷⁰⁷ and an ongoing burden of 1,440 hours per year.⁷⁰⁸

Broker-dealer MSBSPs will be required to file FOCUS Report Part II, as amended, instead of Part II or Part IIA of the FOCUS Report. Given that MSBSPs are expected to be larger and relatively sophisticated firms, the Commission assumes that broker-dealer MSBSPs are carrying firms that file Part II. Although sections of Part II are also found in FOCUS Report Part II, as amended, the burden on broker-dealer MSBSPs will increase (but not as much as for broker-dealer SBSBs), because broker-dealer MSBSPs will be required to file monthly instead of quarterly and will complete additional sections and line items eliciting more detail about their security-based swap and swap activities.⁷⁰⁹ In consideration of these additional requirements, the Commission

FR-FCM: (1) Computation of CFTC Minimum Capital Requirement; (2) Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act; (4) Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; and (5) Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7. The Commission does not estimate a burden for these 5 sections from Form 1-FR-FCM, since the CFTC already requires FCMs to file these 5 sections on a monthly basis (17 CFR 1.10(b)(1)(i)), and therefore, the hourly burden is already accounted for in the PRA estimate for the CFTC's Rule 1.10 (1 CFR 1.10). In addition, the Commission does not anticipate that FCMs will be required to file both the CFTC's Form 1-FR-FCM and the Commission's FOCUS Report Part II, as amended.

⁷⁰⁷ 50 hours x 6 non-model broker-dealer SBSBs = 300 hours. These internal hours likely will be performed by a compliance manager.

⁷⁰⁸ 240 hours per year x 6 non-model broker-dealer SBSBs = 1,440 hours per year. These internal hours likely will be performed by a compliance manager.

⁷⁰⁹ Broker-dealer MSBSPs will be required to complete the following new sections: (1) Financial and Operational Data – Operational Deductions from Capital – Note A; (2) Financial and Operational Data – Potential Operational Charges Not Deducted from Capital – Note B; (3) Computation for Determination of PAB Requirements; and (4) Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions. In addition, broker-dealer MSBSPs also registered as FCMs will be required to file the following sections not included on Pre-Amendment FOCUS Report Part II, but which the CFTC already requires FCMs to file as part of Form 1-FR-FCM: (1) Computation of CFTC Minimum Capital Requirement; (2) Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act; (4) Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; and (5) Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7. The Commission does not estimate a burden for these 5 sections from Form 1-FR-FCM, since the CFTC already requires FCMs to file these 5 sections on a monthly basis (17 CFR 1.10(b)(1)(i)), and therefore, the hourly burden is already accounted for in the PRA estimate for the CFTC's Rule 1.10 (1

estimates that the requirement for broker-dealer MSBSPs to file FOCUS Report Part II, as amended, every month will add an initial burden of 35 hours per firm and an ongoing annual burden of 204 hours per firm. The Commission estimates that there will be one broker-dealer MSBSP, meaning that the estimated burden on the industry will be the same as for a single broker-dealer MSBSP.

Stand-alone non-model broker-dealers that engage in security-based swap activities will be required to file FOCUS Report Part II, as amended, instead of the currently existing FOCUS Report Part II. Although sections of Part II are also found in FOCUS Report Part II, as amended, the burden on stand-alone non-model broker-dealers engaged in security-based swap activities will increase, because stand-alone non-model broker-dealers will be required to complete additional line items eliciting more detail about their security-based swap and swap activities.⁷¹⁰ In consideration of these additional requirements, the Commission estimates that the requirement for stand-alone non-model broker-dealers engaged in security-based swap activities to file FOCUS Report Part II, as amended, will add an initial burden of 20 hours per firm and an ongoing annual burden of 120 hours per firm. The Commission estimates that there are 25 stand-alone non-model

CFR 1.10). In addition, the Commission does not anticipate that FCMs will be required to file both the CFTC's Form 1-FR-FCM and the Commission's FOCUS Report Part II, as amended.

⁷¹⁰ Stand-alone non-model broker-dealers that engage in security-based swap activities will be required to complete the following new sections: (1) Computation for Determination of PAB Requirements; (2) Computation for Determination of Security-Based Swap Customer Reserve Requirements; (3) Possession or Control for Security-Based Swap Customers; and (4) Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions. In addition, non-model broker-dealer SBSBs also registered as FCMs will be required to file the following sections not included on Pre-Amendment FOCUS Report Part II, but which the CFTC already requires FCMs to file as part of Form 1-FR-FCM: (1) Computation of CFTC Minimum Capital Requirement; (2) Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act; (4) Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; and (5) Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7. The Commission does not estimate a burden for these 5 sections from Form 1-FR-FCM, since the CFTC already requires FCMs to file these 5 sections on a monthly basis (17 CFR 1.10(b)(1)(i)), and therefore, the hourly burden is already accounted for in the PRA estimate for the CFTC's Rule 1.10 (1 CFR 1.10). In addition, the Commission does not anticipate that FCMs will be required to file both the CFTC's Form 1-FR-FCM and the Commission's FOCUS Report Part II, as amended.

broker-dealers engaged in security-based swap activities, adding to the industry an initial burden of 500 hours⁷¹¹ and an ongoing burden of 3,000 hours per year.⁷¹²

The Commission received no comments regarding its hour and cost burden estimates for new Rule 17a-5 and continues to believe they are appropriate. However, the estimated burden for Rule 17a-5 is decreased to reflect that stand-alone non-model broker-dealers are no longer required to complete Schedules 2 through 4 of the FOCUS Report. Other than this change, the Commission continues to believe its hour and cost burden estimates for the amendments to Rule 17a-5 are appropriate.

Estimated Hours and Costs of New Rule 18a-7

New Rule 18a-7, which is modeled on Rule 17a-5, as amended, will require non-broker-dealer SBSBs and non-broker-dealer MSBSPs to satisfy certain reporting requirements.⁷¹³

New Rule 18a-7 will require stand-alone SBSBs authorized to use models to compute capital to periodically file certain additional reports relating to their use of internal models to calculate net capital.⁷¹⁴ After consideration of the Supporting Statement accompanying the most recent extension of Rule 17a-5, which estimates that the requirement to file additional ANC reports imposes a burden of 120 hours per respondent,⁷¹⁵ the Commission estimates that paragraph (a)(3) of new Rule 18a-7 will impose an annual burden of 120 hours per model stand-alone SBSB. The Commission estimates that there are 4 model stand-alone SBSBs, resulting in an industry-wide ongoing burden of 480 hours per year.⁷¹⁶

⁷¹¹ 20 hours x 25 stand-alone non-model broker-dealers engaged in security-based swap activities = 500 hours. These internal hours likely will be performed by a compliance manager.

⁷¹² 120 hours per year x 25 stand-alone non-model broker-dealers engaged in security-based swap activities = 3,000 hours per year. These internal hours likely will be performed by a compliance manager.

⁷¹³ See Rule 18a-7, as adopted.

⁷¹⁴ See paragraph (a)(3) of Rule 18a-7, as adopted.

⁷¹⁵ See *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-5* (May 26, 2017), available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=74209001> (4 hours per monthly report x 12 months per year + 8 hours per quarterly report x 4 quarters per year + 40 hours per annual report = 120 hours per year).

⁷¹⁶ 120 hours per year x 4 model stand-alone SBSBs = 480 hours per year. These internal hours likely would be performed by a compliance manager.

New Rule 18a-7 will require stand-alone SBSs and MSBSs to disclose certain financial statements on their Internet websites.⁷¹⁷ After consideration of the Supporting Statement accompanying the most recent extension of Rule 17a-5, which requires similar disclosures by mail instead of on the firm's website,⁷¹⁸ the Commission staff's experience with burden estimates for similar collections of information, and the estimated initial web development costs, the Commission estimates that paragraph (b) of new Rule 18a-7 will impose an initial burden of ten hours per firm and an annual burden of one hour per firm. The Commission estimates that there are 10 respondents (6 stand-alone SBSs and 4 stand-alone MSBSs), resulting in an industry-wide initial burden of 100 hours⁷¹⁹ and an industry-wide ongoing burden of 10 hours per year.⁷²⁰

New Rule 18a-7 will require stand-alone SBSs and MSBSs to file with the Commission an annual report consisting of certain financial reports, and attach to the financial report an oath or affirmation.⁷²¹ Based on the Commission staff's experience with the burden imposed by current Rule 17a-5's annual reports requirement and related postage costs,⁷²² the Commission estimates that paragraphs (c) and (d) of new Rule 18a-7 will impose on stand-alone MSBSs an annual burden of 10 hours and \$6.70 per firm. The Commission estimates that there are 4 stand-alone MSBSs, resulting in an industry-wide ongoing burden of 40 hours⁷²³ and

⁷¹⁷ See paragraph (b) of Rule 18a-7, as adopted. The Commission does not anticipate a dollar cost to establish a website and a toll-free number under this paragraph, because the Commission believes firms that are large enough to register as an SBS or MSBS already maintain a toll-free number for their customers and already have an Internet website. See *Broker-Dealer Exemption from Sending Certain Financial Information to Customers*, Exchange Act Release No. 48272 (Aug. 1, 2003), 68 FR 46446, 46450 (Aug. 6, 2003).

⁷¹⁸ See *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-5*. See section II.B.3.a. of this release for a discussion of the similarities between paragraph (c) of Rule 17a-5, as amended and paragraph (b) of Rule 18a-7, as adopted.

⁷¹⁹ 10 hours x 10 stand-alone SBSs and MSBSs = 100 hours. These internal hours likely would be performed by a compliance manager.

⁷²⁰ 1 hour per year x 10 stand-alone SBSs and MSBSs = 10 hours per year. These internal hours likely would be performed by a compliance clerk.

⁷²¹ See paragraphs (c) and (d) of Rule 18a-7, as adopted.

⁷²² As of May 2018, a priority mail flat rate envelope costs \$6.70, based on costs obtained on the U.S. Postal Service website, available at www.usps.gov. Firms that file electronically will not incur this cost.

⁷²³ 10 hours per year x 4 stand-alone MSBSs = 40 hours per year. These internal hours likely would be performed by a senior accountant.

\$26.80 per year.⁷²⁴ In the proposing release, the Commission estimated that many of the amendments to Rule 17a-5 are not expected to impose an initial burden.⁷²⁵ The Commission received no comment on these estimates and continues to believe they are appropriate.

Stand-alone SBSBs not exempt from Rule 18a-4 will be required to include a compliance report with their annual reports.⁷²⁶ Thus, after consideration of the Supporting Statement accompanying the most recent extension of Rule 17a-5, which estimates that each compliance report takes approximately 60 hours to prepare,⁷²⁷ the Commission estimates that paragraphs (c) and (d) of new Rule 18a-7 will impose an annual burden of 70 hours and \$6.70 per stand-alone SBSB that files a compliance report. The Commission estimates that there are no stand-alone SBSBs that will file a compliance report, resulting in an industry-wide ongoing burden of 0 hours⁷²⁸ and \$0 per year.⁷²⁹

Stand-alone SBSBs exempt from Rule 18a-4 will be required to include an exemption report with their annual reports.⁷³⁰ Thus, after consideration of the Supporting Statement accompanying the most recent extension of Rule 17a-5, which estimates that each exemption report takes approximately 7 hours to prepare,⁷³¹ the Commission estimates that paragraphs (c) and (d) of new Rule 18a-7 will impose an annual burden of 17 hours and \$6.70 per stand-alone SBSB that files an exemption report. The Commission estimates that there are

⁷²⁴ \$6.70 per year x 4 stand-alone MSBSPs = \$26.80 per year.

⁷²⁵ *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25270.

⁷²⁶ *See* paragraph (c)(1)(i)(B) of Rule 18a-7, as adopted.

⁷²⁷ *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-5*.

⁷²⁸ 70 hours per year x 2 stand-alone SBSBs = 210 hours per year. These internal hours likely would be performed by a senior accountant.

⁷²⁹ \$6.70 per year x 2 stand-alone SBSBs = \$20.10 per year. Firms that file electronically will not incur this cost. As discussed above, the Commission estimates that of the 9 stand-alone SBSBs, 6 will avail themselves of the exemption from Rule 18a-4, and the remaining 3 will be registered as FCMs. The Commission also believes that the three stand-alone SBSBs that are registered as FCMs will also elect to avail themselves of the full alternative compliance mechanism. Consequently, the Commission estimates that there will be no stand-alone SBSBs not exempt from Rule 18a-4. *See* section IV.C of this release.

⁷³⁰ *See* paragraph (c)(1)(i)(B) of Rule 18a-7, as adopted.

⁷³¹ *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-5*.

6 stand-alone SBSBs that will file an exemption report, resulting in an industry-wide ongoing burden of 102 hours⁷³² and \$40.20 per year.⁷³³

New Rule 18a-7 will require stand-alone SBSBs and MSBSPs to file a statement regarding the independent public accountant engaged to audit the firm's annual reports.⁷³⁴ In addition to postage costs, the Supporting Statement accompanying the most recent extension of Rule 17a-5 estimates that the parallel requirement in Rule 17a-5 will impose a two-hour burden on each introducing broker-dealer to file an updated statement, and a more significant ten-hour burden on each carrying broker-dealer, since the changes may require renegotiating the carrying broker-dealer's agreement with its independent public accountant.⁷³⁵ Consistent with that Supporting Statement, the Commission estimates that paragraph (e) of new Rule 18a-7 will impose an initial burden of ten hours per firm and an annual burden of 2 hours and 50 cents per firm.⁷³⁶ The Commission estimates that there are 10 respondents (6 stand-alone SBSBs and 4 stand-alone MSBSPs), resulting in an industry-wide initial burden of 100 hours⁷³⁷ and an industry-wide ongoing burden of 20 hours⁷³⁸ and \$5.00 per year.⁷³⁹

New Rule 18a-7 will require stand-alone SBSBs and MSBSPs to engage an independent public accountant to provide reports covering the firm's annual reports.⁷⁴⁰ As discussed above, the Commission is modifying the provisions of Rule 18a-7 to allow stand-alone SBSBs and MSBSPs, as well as an SBSB also

⁷³² 17 hours per year x 6 stand-alone SBSBs = 102 hours per year. These internal hours likely would be performed by a senior accountant.

⁷³³ \$6.70 per year x 6 stand-alone SBSBs = \$40.20 per year. Firms that file electronically will not incur this cost.

⁷³⁴ See paragraph (e) of Rule 18a-7, as adopted.

⁷³⁵ See *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-5*.

⁷³⁶ It currently costs 50 cents to send a one ounce retail domestic first-class letter through the U.S. Postal Service. See U.S. Postal Service, First-Class Mail, available at http://pe.usps.com/text/dmm300/Notice123.htm#_c011 (last visited May 10, 2018).

⁷³⁷ 10 hours x 13 stand-alone SBSBs and MSBSPs = 130 hours. These internal hours likely would be performed by a senior accountant.

⁷³⁸ 2 hours per year x 10 stand-alone SBSBs and MSBSPs = 20 hours per year. These internal hours likely would be performed by a compliance clerk.

⁷³⁹ \$0.50 per year x 10 stand-alone SBSBs and MSBSPs = \$5.00 per year.

⁷⁴⁰ See paragraph (f) of Rule 18a-7, as adopted.

registered as an OTC derivatives dealer, to engage an independent public accountant that is not registered with the PCAOB, and to permit the accountant to use GAAS in the United States or PCAOB standards.⁷⁴¹ The Supporting Statement accompanying the most recent extension of Rule 17a-5 estimates that it will cost each carrying firm \$300,000 to retain an independent public accountant to audit its financial statements and \$150,000 to examine its compliance report.⁷⁴² Stand-alone MSBSPs are not required to file a compliance or exemption report, while stand-alone SBSs will be required to retain an independent public accountant to review their compliance report (if they are not exempt from Rule 18a-4) or exemption report (if they are exempt from Rule 18a-4).

Therefore, the Commission estimates that paragraph (f) of new Rule 18a-7 will impose an annual cost of \$300,000 on each stand-alone MSBSP. The Commission estimates that there are 4 stand-alone MSBSPs, resulting in an industry-wide ongoing burden of \$1,200,000 per year.⁷⁴³ The Commission estimates that paragraph (f) of new Rule 18a-7 will impose on stand-alone SBSs exempt from Rule 18a-4 an annual cost of \$303,000 per firm,⁷⁴⁴ since both their financial statements and exemption report will need to be audited. The Commission estimates that there are 6 stand-alone SBSs exempt from Rule 18a-4, resulting in an industry-wide ongoing burden of \$1,818,000 per year.⁷⁴⁵ The Commission estimates that paragraph (f) of new Rule 18a-7 will impose on stand-alone SBSs not exempt from Rule 18a-4 an annual cost of \$450,000 per firm,⁷⁴⁶ since both their financial statements and compliance report will need to be audited. The Commission estimates

⁷⁴¹ See section II.B.3.a. of this release (discussing the requirement to file annual reports and the qualifications of independent public accountants).

⁷⁴² See *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-5*.

⁷⁴³ \$300,000 per year x 4 stand-alone MSBSPs = \$1,200,000 per year.

⁷⁴⁴ \$300,000 per year (financial statements) + \$3,000 per year (exemption report) = \$303,000 per year.

⁷⁴⁵ \$303,000 per year x 6 stand-alone SBSs = \$1,818,000 per year.

⁷⁴⁶ \$300,000 per year (financial statements) + \$150,000 per year (compliance report) = \$450,000 per year.

that there are no stand-alone SBSBs not exempt from Rule 18a-4, resulting in an industry-wide ongoing burden of \$0 per year.⁷⁴⁷

New Rule 18a-7 will require stand-alone SBSBs and MSBSPs to notify the Commission of a change in fiscal year.⁷⁴⁸ Based on the Commission staff's experience with the parallel requirement under Rule 17a-5, and the Supporting Statement accompanying the most recent extension of Rule 17a-11, which estimates that each financial notice takes approximately 1 hour to prepare and file with the Commission,⁷⁴⁹ the Commission estimates that paragraph (i) of new Rule 18a-7 will impose a burden of 1 hour and 50 cents on a firm planning to change its fiscal year. The Commission estimates that each year, 1 firm will change its fiscal year, such that the estimated burden on the industry will be 1 hour and 50 cents per year.

New Rule 18a-7 will require stand-alone SBSBs and MSBSPs to file FOCUS Report Part II, as amended, monthly,⁷⁵⁰ and will require bank SBSBs and MSBSPs to file new FOCUS Report Part IIC quarterly.⁷⁵¹

Stand-alone SBSBs will be required to file FOCUS Report Part II, as amended, on a monthly basis.⁷⁵² FOCUS Report Part II, as amended, includes eleven sections and four schedules applicable to stand-alone SBSBs.⁷⁵³ Stand-alone SBSBs dually registered as FCMs will be required to complete five additional sections,

⁷⁴⁷ \$450,000 per year x 0 stand-alone SBSBs = \$0 per year. As discussed above, the Commission estimates that of the 9 stand-alone SBSBs, 6 will avail themselves of the exemption from Rule 18a-4, and the remaining 3 will be registered as FCMs. The Commission also believes that the three stand-alone SBSBs that are registered as FCMs will also elect to avail themselves of the full alternative compliance mechanism. Consequently, the Commission estimates that there will be no stand-alone SBSBs not exempt from Rule 18a-4. See section IV.C of this release.

⁷⁴⁸ See paragraph (i) of Rule 18a-7, as adopted.

⁷⁴⁹ See Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-11* (July 24, 2017), available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=75553601>.

⁷⁵⁰ See paragraph (a)(1) of Rule 18a-7, as adopted.

⁷⁵¹ See paragraph (a)(2) of Rule 18a-7, as adopted.

⁷⁵² See paragraph (a)(1) of Rule 18a-7, as adopted.

⁷⁵³ Stand-alone SBSBs will be required to complete the following sections and schedules: (1) Statement of Financial Condition; (2) either Computation of Net Capital (Filer Authorized to Use Models) or Computation of Net Capital (Filer Not Authorized to Use Models); (3) Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer); (4) Statement of Income (Loss); (5) Capital Withdrawals; (6) Capital Withdrawals – Recap; (7) Financial and Operational Data; (8) Financial and Operational Data – Operational Deductions from Capital – Note A; (9) Financial and Operational Data – Potential Operational Charges Not Deducted from Capital – Note B; (10) Computation for Determination of Security-Based Swap Customer Reserve Requirements; (11) Possession or Control for Security-Based Swap Customers; (12) Schedule 1 –

all of which the CFTC already requires FCMs to file as part of Form 1-FR-FCM.⁷⁵⁴ In consideration of these additional requirements, the Commission estimates that the requirement for stand-alone SBSBs to file FOCUS Report Part II, as amended, every month will impose an initial burden of 160 hours per firm and an ongoing annual burden of 192 hours per firm. The Commission estimates that there are 6 stand-alone SBSBs, resulting in an industry-wide initial burden of 960 hours⁷⁵⁵ and an industry-wide ongoing burden of 1,152 hours per year.⁷⁵⁶

Stand-alone MSBSPs will be required to file FOCUS Report Part II, as amended, on a monthly basis.⁷⁵⁷ FOCUS Report Part II, as amended, includes three sections and four schedules applicable to stand-alone MSBSPs.⁷⁵⁸ Stand-alone MSBSPs dually registered as FCMs will be required to complete five additional sections, all of which the CFTC already requires FCMs to file as part of Form 1-FR-FCM.⁷⁵⁹ In consideration

Aggregate Securities, Commodities, and Swaps Positions; (13) Schedule 2 – Credit Concentration Report for Fifteen Largest Exposures in Derivatives; (14) Schedule 3 – Portfolio Summary of Derivatives Exposures by Internal Credit Rating; and (15) Schedule 4 – Geographic Distribution of Derivatives Exposures for Ten Largest Countries.

⁷⁵⁴ Stand-alone SBSBs also registered as FCMs will be required to file the following sections: (1) Computation of CFTC Minimum Capital Requirement; (2) Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act; (4) Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; and (5) Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7. The Commission does not estimate a burden for these five sections, since the CFTC already requires FCMs to file these five sections on a monthly basis (17 CFR 1.10(b)(1)(i)), and therefore, the hourly burden is already accounted for in the PRA estimate for the CFTC's Rule 1.10 (1 CFR 1.10). In addition, the Commission does not anticipate that FCMs will be required to file both the CFTC's Form 1-FR-FCM and the Commission's FOCUS Report Part II, as amended.

⁷⁵⁵ 160 hours x 6 stand-alone SBSBs = 960 hours. These internal hours likely would be performed by a senior compliance manager.

⁷⁵⁶ 192 hours per year x 6 stand-alone SBSBs = 1,152 hours per year. These internal hours likely would be performed by a senior compliance manager.

⁷⁵⁷ See paragraph (a)(1) of Rule 18a-7, as adopted.

⁷⁵⁸ Stand-alone MSBSPs will be required to complete the following sections and schedules: (1) Statement of Financial Condition; (2) Computation of Tangible Net Worth; (3) Statement of Income (Loss); (4) Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions; (5) Schedule 2 – Credit Concentration Report for Fifteen Largest Exposures in Derivatives; (6) Schedule 3 – Portfolio Summary of Derivatives Exposures by Internal Credit Rating; and (7) Schedule 4 – Geographic Distribution of Derivatives Exposures for Ten Largest Countries.

⁷⁵⁹ Stand-alone MSBSPs also registered as FCMs will be required to file the following sections: (1) Computation of CFTC Minimum Capital Requirement; (2) Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act; (4) Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; and (5) Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7. The Commission does not estimate a burden for these 5 sections, since the CFTC already requires FCMs to file these 5 sections

of these additional requirements, the Commission estimates that the requirement for stand-alone MSBSPs to file FOCUS Report Part II, as amended, every month will impose an initial burden of 40 hours per firm and an ongoing annual burden of 48 hours per firm. The Commission estimates that there are 4 stand-alone MSBSPs, resulting in an industry-wide initial burden of 160 hours⁷⁶⁰ and an industry-wide ongoing burden of 192 hours per year.⁷⁶¹

Bank SBSBs will be required to file new FOCUS Report Part IIC on a quarterly basis.⁷⁶² New FOCUS Report Part IIC includes five sections and one schedule applicable to bank SBSBs.⁷⁶³ The Commission does not expect new FOCUS Report Part IIC to impose a significant burden on bank SBSBs, because two of the five sections require the firm to file calculations already computed in accordance with Rule 18a-3, and the other three sections either mirror or are scaled down versions of schedules to FFIEC Form 031, which banks are already required to file with their prudential regulator (although they will need to transpose this information from FFIEC Form 031 to FOCUS Report Part IIC). Although bank SBSBs dually registered as FCMs will be required to complete five additional sections, the CFTC already requires FCMs to file these schedules on Form 1-FR-FCM.⁷⁶⁴ In consideration of these additional requirements, the Commission estimates that the

on a monthly basis (17 CFR 1.10(b)(1)(i)), and therefore, the hourly burden is already accounted for in the PRA estimate for the CFTC's Rule 1.10 (1 CFR 1.10). In addition, the Commission does not anticipate that FCMs will be required to file both the CFTC's Form 1-FR-FCM and the Commission's FOCUS Report Part II, as amended.

⁷⁶⁰ 40 hours x 4 stand-alone MSBSPs = 160 hours. These internal hours likely will be performed by a senior compliance manager.

⁷⁶¹ 48 hours per year x 4 stand-alone MSBSPs = 192 hours per year. These internal hours likely will be performed by a senior compliance manager.

⁷⁶² See paragraph (a)(2) of Rule 18a-7, as adopted.

⁷⁶³ Bank SBSBs will be required to complete the following sections and schedules: (1) Balance Sheet (Information as Reported on FFIEC Form 031 – Schedule RC); (2) Regulatory Capital (Information as Reported on FFIEC Form 031 – Schedule RC-R); (3) Income Statement (Information as Reported on FFIEC Form 031 – Schedule RI); (4) Computation for Determination of Security-Based Swap Customer Reserve Requirements; (5) Possession or Control for Security-Based Swap Customers; and (6) Schedule 1 –Aggregate Security-Based Swap and Swap Positions.

⁷⁶⁴ Bank SBSBs also registered as FCMs will be required to file the following sections: (1) Computation of CFTC Minimum Capital Requirement; (2) Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act; (4) Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; and (5) Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7. The Commission does not estimate a burden for these 5 sections, since the CFTC already requires FCMs to file these 5 sections on a monthly basis (17 CFR 1.10(b)(1)(i)), and therefore, the hourly burden is already accounted for in the PRA estimate for the CFTC's

requirement for bank SBSBs to file FOCUS Report Part IIC quarterly will impose an initial burden of 36 hours per firm and an ongoing annual burden of 16 hours per firm. The Commission estimates that there are 25 bank SBSBs, resulting in an industry-wide initial burden of 900 hours⁷⁶⁵ and an industry-wide ongoing burden of 400 hours per year.⁷⁶⁶

Bank MSBSPs will be required to file new FOCUS Report Part IIC on a quarterly basis.⁷⁶⁷ New FOCUS Report Part IIC includes three sections and one schedule applicable to bank MSBSPs.⁷⁶⁸ Bank MSBSPs dually registered as FCMs will be required to complete five additional sections, all of which the CFTC already requires FCMs to file as part of Form 1-FR-FCM.⁷⁶⁹ However, the Commission does not expect any banks to register with the Commission as MSBSPs and therefore does not anticipate these requirements to impose an additional burden.⁷⁷⁰

The Commission received no comments regarding its hour and cost burden estimates for new Rule 18a-7 and continues to believe they are appropriate.

Rule 1.10 (1 CFR 1.10). In addition, the Commission does not anticipate that FCMs will be required to file both the CFTC's Form 1-FR-FCM and the Commission's FOCUS Report Part II, as amended.

⁷⁶⁵ 36 hours x 25 bank SBSBs = 900 hours. These internal hours likely will be performed by a senior compliance manager.

⁷⁶⁶ 16 hours per year x 25 bank SBSBs = 400 hours per year. These internal hours likely will be performed by a senior compliance manager.

⁷⁶⁷ See paragraph (a)(2) of Rule 18a-7, as adopted.

⁷⁶⁸ Bank MSBSPs will be required to complete the following sections and schedules: (1) Balance Sheet (Information as Reported on FFIEC Form 031 – Schedule RC); (2) Regulatory Capital (Information as Reported on FFIEC Form 031 – Schedule RC-R); (3) Income Statement (Information as Reported on FFIEC Form 031 – Schedule RI); and (4) Schedule 1 – Aggregate Security-Based Swap and Swap Positions.

⁷⁶⁹ Bank MSBSPs also registered as FCMs will be required to file the following sections: (1) Computation of CFTC Minimum Capital Requirement; (2) Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act; (4) Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; and (5) Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7. The Commission does not estimate a burden for these 5 sections, since the CFTC already requires FCMs to file these 5 sections on a monthly basis (17 CFR 1.10(b)(1)(i)), and therefore, the hourly burden is already accounted for in the PRA estimate for the CFTC's Rule 1.10 (1 CFR 1.10). In addition, the Commission does not anticipate that FCMs will be required to file both the CFTC's Form 1-FR-FCM and the Commission's FOCUS Report Part II, as amended.

⁷⁷⁰ The Commission estimates that the requirement for bank MSBSPs to file FOCUS Report Part IIC quarterly will impose an initial burden of 16 hours per firm and an ongoing annual burden of 8 hours per firm.

4. Amendments to Rule 17a-11 and New Rule 18a-8

The amendments to Rule 17a-11 and new Rule 18a-8 will impose collection of information requirements that result in annual burdens for broker-dealers, SBSs, MSBSPs, and national securities exchanges and national securities associations. The Commission estimates that Rule 17a-11, as amended, will impose the following initial and annual burdens:⁷⁷¹

Burden	Annual Burden
New notice of failure to deposit in Rule 15c3-3(p) account	<i>Per notice:</i> 1 hour <i>Industry:</i> 100 hours
New notices filed by exchanges and national securities associations	<i>Per notice:</i> 1 hour <i>Industry:</i> 5 hours
Total – Amendments to Rule 17a-11	<i>Industry:</i> 105 hours

The Commission estimates that new Rule 18a-8 will impose an annual burden of 4.6 hours per year.

Estimated Hours and Costs of Amendments to Rule 17a-11

The Commission is adopting paragraph (f) to Rule 17a-11, which will require broker-dealers engaged in security-based swap activities to notify the Commission if they fail to make a deposit required under paragraph (p) of Rule 15c3-3.⁷⁷² Because the burden to calculate the reserve amount is already accounted for in the PRA estimate for Rule 15c3-3,⁷⁷³ the burden imposed by paragraph (f) of Rule 17a-11, as amended, is the requirement to notify the Commission when the firm fails to act in accordance with paragraph (p) of Rule 15c3-3. Given the similarity of this new requirement to the current requirements of Rule 17a-11, the Commission estimates that each required notice will take one hour to prepare and file.⁷⁷⁴ Based on Commission experience with the number of notices filed under current Rule 17a-11,⁷⁷⁵ the Commission estimates that 100 notices will

⁷⁷¹ See paragraphs (f) and (g) of Rule 17a-11, as amended.

⁷⁷² See paragraph (f) of Rule 17a-11, as amended.

⁷⁷³ See *Capital, Margin, and Segregation Adopting Release*, 84FR at 43964-67.

⁷⁷⁴ See *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-11*.

⁷⁷⁵ See *id.* (noting that in 2016, the Commission received approximately 253 notices under Rule 17a-11).

be filed each year under paragraph (f) of Rule 17a-11, as amended, resulting in an industry-wide ongoing burden of 100 hours per year.⁷⁷⁶

The Commission is redesignating current paragraph (f) of Rule 17a-11 as paragraph (g) and requiring a broker-dealer's national securities exchange or national securities association to notify the Commission if it learns that the broker-dealer failed to provide a notice required under any paragraph of Rule 17a-11 (instead of just paragraphs (b) through (e) of Rule 17a-11 as it currently requires).⁷⁷⁷ Thus, these entities will be subject to new burdens to file a delinquent broker-dealer's notices under new paragraph (f) (failure to deposit in Rule 15c3-3(p) account). After considering the similar preexisting Rule 17a-11 requirement, the Commission estimates that each required notice will take one hour to prepare and file.⁷⁷⁸ Based on Commission experience with the number of notices currently filed by these entities, the Commission estimates that five notices will be filed pursuant to the amendment to paragraph (g) of Rule 17a-11, as amended, resulting in an estimated industry-wide ongoing burden of five hours per year.⁷⁷⁹

The Commission received no comments regarding its hour and cost burden estimates for the amendments to Rule 17a-11 and continues to believe they are appropriate.

Estimated Hours and Costs of New Rule 18a-8

New Rule 18a-8 will require non-broker-dealer SBSs and non-broker-dealer MSBSPs to notify the Commission of certain indicia of their financial condition.⁷⁸⁰ The Commission estimates that each Rule 18a-8 notice will take approximately 55 minutes to prepare and file, in contrast to its estimate that a Rule 17a-11 notice will take one hour to prepare and file,⁷⁸¹ because stand-alone SBSs and MSBSPs do not have a DEA

⁷⁷⁶ 100 notices per year x 1 hour per notice = 100 hours per year. These internal hours likely will be performed by a compliance manager.

⁷⁷⁷ See paragraph (g) of Rule 17a-11, as amended.

⁷⁷⁸ See *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-11*.

⁷⁷⁹ 5 notices per year x 1 hour per notice = 5 hours per year. These internal hours likely will be performed by a compliance manager.

⁷⁸⁰ See Rule 18a-8, as adopted.

⁷⁸¹ See *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-11*.

with which to file a copy of the Rule 17a-11 notice and bank SBSBs and MSBSBs are not required to file the Rule 17a-11 notice with their prudential regulator.⁷⁸²

The Commission estimates that it will receive approximately five Rule 18a-8 notices per year, based on the substantially smaller pool of possible respondents, as compared with current Rule 17a-11. Under current Rule 17a-11, there are approximately 3,582 possible respondents – 3,764 registered broker-dealers, minus approximately 182 broker-dealers registered pursuant to Section 15(b)(11)(A) of the Exchange Act.⁷⁸³ In contrast, the Commission estimates that there will be 35 non-broker-dealer SBSBs and non-broker-dealer MSBSBs (25 bank SBSBs, 6 stand-alone SBSBs, and 4 stand-alone MSBSBs). Assuming that each of the 5 Rule 18a-8 notices takes 55 minutes to prepare and file, the Commission estimates new Rule 18a-8 will result in an industry-wide ongoing burden of 4.6 hours per year.⁷⁸⁴

The Commission received no comments regarding its hour and cost burden estimates for new Rule 18a-8 and continues to believe they are appropriate.

5. Amendments to Rule 17a-12

Rule 17a-12, as amended, will require OTC derivatives dealers to file FOCUS Report Part II, as amended, instead of FOCUS Report Part IIB. This is not so much a new burden as a different burden, since in the absence of this amendment these firms would be required to file FOCUS Report Part IIB instead. The new lines on FOCUS Report Part II, as amended, will generally not be applicable to OTC derivatives dealers. Some new lines on FOCUS Report Part II, as amended, require similar types of information as FOCUS Report Part

⁷⁸² Compare paragraph (h) of Rule 17a-11, as amended, with paragraph (h) of Rule 18a-8, as adopted.

⁷⁸³ Rule 17a-11 does not apply to a broker-dealer registered pursuant to Section 15(b)(11)(A) of the Exchange Act that is not a member of either a national securities exchange or a national securities association. See paragraph (j) of Rule 17a-11, as amended. The Commission estimates that there are approximately 3,582 broker-dealers subject to Rule 17a-11 after consulting with SIPC (3,764 registered broker-dealers – approximately 182 broker-dealers registered pursuant to Section 15(b)(11)(A) of the Exchange Act = 3,711 Rule 17a-11 respondents).

⁷⁸⁴ 5 notices per year x (55 minutes per notice ÷ 60 minutes per hour) = 4.6 hours per year. These internal hours likely will be performed by a compliance manager.

IIB, but may be phrased in a different way.⁷⁸⁵ Other new lines on FOCUS Report Part II, as amended, may require additional detail regarding information that was already required to be reported on FOCUS Report Part IIB.⁷⁸⁶ Still other new lines on FOCUS Report Part II, as amended, require information that the OTC derivative dealers are already required to calculate pursuant to another Exchange Act rule.⁷⁸⁷ Finally, some new line items on FOCUS Report Part II, as amended, are not applicable to OTC derivatives dealers and therefore will not be completed by these firms.⁷⁸⁸

Although FOCUS Report Part II, as amended, is partially modeled on Part IIB, the initial burden on OTC derivatives dealers is expected to increase, so that firms can analyze revised FOCUS Report Part II. However, once firms have analyzed FOCUS Report Part II, as amended, the amendments to Rule 17a-12 are not expected to change the estimated ongoing burden imposed by Rule 17a-12. The Commission estimates that Rule 17a-12, as amended, will impose on each OTC derivative dealers an initial burden of 20 hours. The Commission estimates that there are 4 respondents, resulting in an estimated industry-wide initial burden of 80 hours.⁷⁸⁹ The Commission estimates that Rule 17a-12, as amended, will not change the estimated ongoing burden imposed by Rule 17a-12.

⁷⁸⁵ Compare, e.g., FOCUS Report Part IIB, Schedule VI – Aggregate Securities and Commodities Positions, Line 2 (U.S. Government agency), with FOCUS Report Part II, as amended, Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions, Line 2 (U.S. government agency and U.S. government sponsored enterprises).

⁷⁸⁶ Compare, e.g., FOCUS Report Part IIB, Schedule VI – Aggregate Securities and Commodities Positions, Line 2 (U.S. Government agency), with FOCUS Report Part II, as amended, Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions, Lines 2A-2B (requesting a break-out of the portion of U.S. government agency and U.S. government sponsored enterprises attributable to mortgage-backed securities and debt securities).

⁷⁸⁷ See, e.g., FOCUS Report Part II, as amended, Computation of Minimum Regulatory Capital Requirements (Broker-Dealer), Line 9A (soliciting the filer’s net capital in excess of 120% of the firm’s minimum net capital requirement).

⁷⁸⁸ See, e.g., FOCUS Report Part II, as amended, Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer SBSB).

⁷⁸⁹ 20 hours x 4 OTC derivatives dealers = 80 hours. These internal hours likely will be performed by a compliance manager.

6. New Rule 18a-9

New Rule 18a-9, which is modeled on Rule 17a-13, will require stand-alone SBSBs to establish a securities count program.⁷⁹⁰ As explained below, the Commission estimates that new Rule 18a-9 will impose an industry-wide initial burden of 225 hours and an industry-wide ongoing burden of 900 hours per year.

The current approved PRA estimate for Rule 17a-13 estimates a securities count program imposes an average ongoing cost of 100 hours per year.⁷⁹¹ The Commission is using this estimate, and therefore estimates that new Rule 18a-9 will impose an ongoing annual burden of 100 hours per stand-alone SBSB. The Commission estimates that there are 6 stand-alone SBSBs, resulting in an estimated industry-wide ongoing burden of 600 hours per year.⁷⁹²

The Commission also estimates that new Rule 18a-9 will impose an initial burden of 25 hours per firm. The records required by new Rule 18a-9 should already be recorded by the systems implemented under new Rules 18a-5 and 18a-6, and accordingly, the resulting initial burden is largely already accounted for under these rules.⁷⁹³ However, the Commission estimates that the initial cost to establish procedures for conducting the securities count program, including identifying the persons involved in the program, will create an initial burden of approximately 25 hours per stand-alone SBSB, or 150 hours for the estimated 6 stand-alone SBSBs.⁷⁹⁴

The Commission received no comments regarding its hour and cost burden estimates for new Rule 18a-9 and continues to believe they are appropriate.

⁷⁹⁰ See Rule 18a-9, as adopted.

⁷⁹¹ See Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-13* (Feb. 28, 2017), available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=7182940>.

⁷⁹² 100 hours per year x 6 stand-alone SBSBs = 600 hours per year. These internal hours likely will be performed by an operations specialist.

⁷⁹³ However, the Commission assumes that stand-alone SBSBs and MSBSPs do not currently have a securities count program in place.

⁷⁹⁴ 25 hours x 6 stand-alone SBSBs = 150 hours. These internal hours likely will be performed by a senior operations manager.

7. Amendments to Rule 18a-10

Rule 18a-10, as amended, contains an alternative compliance mechanism pursuant to which a stand-alone SBSB that is registered as a swap dealer and predominantly engages in a swaps business may elect to comply with the recordkeeping and reporting requirements of the CEA and the CFTC's rules in lieu of complying with Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9.⁷⁹⁵ The Commission estimates that 3 stand-alone SBSBs will elect to operate under Rule 18a-10. These respondents were included in the proposing release in other collections of information (Rule 18a-5, Rule 18a-6, Rule 18a-7, Rule 18a-8, and Rule 18a-9, as proposed), and have been moved to the information collection for new Rule 18a-10.⁷⁹⁶

The Commission estimates the paperwork burden associated with transmitting to the Commission a copy of the notice required by paragraph (b)(4) of Rule 18a-10, as amended, to be 5 minutes for a stand-alone SBSB operating under Rule 18a-10. The Commission further estimates that it will receive one notice from a single submitting SBSB per year. The Commission is basing this estimate on the smaller pool of possible respondents, as compared with new Rule 18a-8.⁷⁹⁷

Assuming that the single Rule 18a-10 notice takes 5 minutes to transmit to the Commission, the Commission estimates Rule 18a-10, as amended, will result in an industry-wide ongoing burden of 0.083 hours per year.⁷⁹⁸

8. Amendments to Rule 3a71-6

Rule 3a71-6, as amended, will require submission of certain information to the Commission to the extent foreign SBSBs or MSBSPs elect to request a substituted compliance determination with respect to the Title VII recordkeeping and reporting requirements. The Commission expects that foreign SBSBs and MSBSPs will seek to rely on substituted compliance upon registration, and that it is likely that the majority of

⁷⁹⁵ See Rule 18a-10, as amended.

⁷⁹⁶ See *supra* section IV.C.

⁷⁹⁷ See *supra* section IV.D.4.

⁷⁹⁸ 1 notice per year x (5 minutes per notice ÷ 60 minutes per hour) = 0.0833 hours per year. These internal hours likely will be performed by a compliance manager.

such requests will be made during the first year following the effective date of this amendment. Requests will not be necessary with regard to applicable rules and regulations of a foreign jurisdiction that have previously been the subject of a substituted compliance determination in connection with the applicable rules.

The Commission expects that the majority of substituted compliance applications will be submitted by foreign authorities, and that very few substituted compliance requests will come from SBSDs or MSBSPs. For purposes of this assessment, the Commission estimates that three SBSDs or MSBSPs will submit such applications in connection with the Commission's recordkeeping and reporting requirements.⁷⁹⁹ After consideration of the release adopting Rule 3a71-6, the Commission estimates that the total paperwork burden incurred by such entities associated with preparing and submitting a request for a substituted compliance determination in connection with the recordkeeping and reporting requirements will be approximately 240 hours, plus \$240,000 for the services of outside professionals for all 3 requests.⁸⁰⁰

The Commission received no comments regarding its hour and cost burden estimates for Rule 3a71-6, as amended, and continues to believe they are appropriate.

E. Collection of Information Is Mandatory

The collections of information pursuant to the rule amendments and new rules, being adopted, are mandatory, as applicable, for broker-dealers, SBSDs, MSBSPs, certain third-party custodians, and NSEs and

⁷⁹⁹ See *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR at 29959. See also *Trade Acknowledgment and Verification of Security-Based Swap Transactions*, 81 FR at 39382; *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43960.

⁸⁰⁰ See *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR at 30097 (“The Commission estimates that the total one-time paperwork burden incurred by such entities associated with preparing and submitting a request for a substituted compliance determination in connection with the business conduct requirements will be approximately 240 hours, plus \$240,000 for the services of outside professionals for all three requests”). The Commission further stated that in practice those amounts may overestimate the costs of requests pursuant to Rule 3a71-6 as adopted, as such requests would solely address the business conduct requirements, rather than the broader proposed scope of substituted compliance set forth in the Cross-Border Proposing Release. See *id.* at 30097, n. 1583. To the extent that an SBSD submits substituted compliance requests in connection with the business conduct requirements, the trade acknowledgment and verification requirements, the capital and margin requirements, and the recordkeeping and reporting requirements, the Commission believes that the paperwork burden associated with the requests would be greater than that associated with a narrower request, given the need for more information regarding the comparability of the relevant rules and the adequacy of the associated supervision and enforcement practices. In the Commission's view, however, the burden associated with such a combined request would not exceed the prior estimate. See *Trade Acknowledgment and Verification of Security-Based Swap Transactions*, 81 FR at 39833, n. 258.

NSAs. Compliance with the collection of information requirements associated with Rule 3a71-6, regarding the availability of substituted compliance, is mandatory for all foreign financial authorities, foreign SBSs, or foreign MSBSPs that seek a substituted compliance determination.

F. Confidentiality

The broker-dealer and stand-alone SBS and MSBSP annual reports filed with the Commission are not confidential, except that if the statement of financial condition is bound separately from the balance of the annual reports and each page of the balance of the annual reports is stamped “confidential,” then the balance of the annual reports shall be deemed confidential to the extent permitted by law.⁸⁰¹ Subject to certain exceptions,⁸⁰² if there are material weaknesses, the accountant’s report on the compliance report must be made available for customers’ inspection and, consequently, it will not be deemed confidential.⁸⁰³ Subject to certain exceptions,⁸⁰⁴ a broker-dealer must furnish to its customers its unaudited financial statements,⁸⁰⁵ and must provide annually a balance sheet with appropriate notes prepared in accordance with generally accepted accounting principles and which must be audited if the broker-dealer is required to file audited financial statements with the Commission.⁸⁰⁶

Stand-alone SBSs and MSBSPs must also make publicly available on their websites audited and unaudited financial statements, and also make these documents available in writing, upon request, to any person that has a security-based swap account.⁸⁰⁷ A stand-alone SBS will also be required to disclose on its website at the same time: (1) a statement of the amount of the firm’s net capital and required net capital and other

⁸⁰¹ See paragraph (e)(3) of Rule 17a-5, as amended; paragraph (d)(2) of Rule 18a-7, as adopted.

⁸⁰² See paragraph (c)(1)(i) through (iii) of Rule 17a-5, as amended.

⁸⁰³ See paragraph (c)(2)(iv) of Rule 17a-5, as amended.

⁸⁰⁴ See paragraph (c)(1)(i) through (iii) of Rule 17a-5, as amended.

⁸⁰⁵ See paragraph (c)(3) of Rule 17a-5, as amended.

⁸⁰⁶ See paragraph (c)(2)(i) of Rule 17a-5, as amended.

⁸⁰⁷ See paragraph (b) of Rule 18a-7, as adopted.

information, if applicable, related to the firm's net capital;⁸⁰⁸ and (2) if, in connection with the firm's most recent annual reports, the report of the independent public accountant identifies one or more material weaknesses, a copy of the report.⁸⁰⁹

The forms that the Commission has adopted for use by applicants for registration as SBSDs or MSBSPs provides for applicants to notify the Commission regarding intended reliance on substituted compliance.⁸¹⁰ The Commission generally will make requests for substituted compliance determinations public, subject to requests for confidential treatment being submitted pursuant to any applicable provisions governing confidentiality under the Exchange Act.⁸¹¹

With respect to the other information collected under the rule amendments and new rules being adopted, the firm can request the confidential treatment of the information.⁸¹² If such a confidential treatment request is made, the Commission anticipates that it will keep the information confidential subject to the provisions of applicable law.⁸¹³

G. Retention Period for Recordkeeping Requirements

Rule 17a-4, as amended, specifies the required retention periods for a broker-dealer.⁸¹⁴ New Rule 18a-6 specifies the required retention periods for non-broker-dealer SBSDs and non-broker-dealer MSBSPs.⁸¹⁵ Many of the required records must be retained for three years; certain other records must be retained for longer periods.⁸¹⁶

⁸⁰⁸ See paragraph (b)(1)(ii) of Rule 18a-7, as adopted.

⁸⁰⁹ See paragraphs (b)(1)(iii) of Rule 18a-7, as adopted.

⁸¹⁰ See *Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants*, 80 FR at 49049.

⁸¹¹ See *Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities*, Exchange Act Release No. 72372 (June 25, 2014, 79 FR 47278, 47359 (Aug. 12, 2014)).

⁸¹² See 17 CFR 200.83. Information regarding requests for confidential treatment of information submitted to the Commission is available at <http://www.sec.gov/foia/howfo2.htm#privacy>.

⁸¹³ See, e.g., 5 U.S.C. 552 *et seq.*; 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

⁸¹⁴ See Rule 17a-4, as amended.

⁸¹⁵ See Rule 18a-6, as adopted.

⁸¹⁶ See Rule 17a-4, as amended; Rule 18a-6, as adopted.

V. ECONOMIC ANALYSIS

A. Introduction

The Commission is sensitive to the costs and benefits of its rules. The following economic analysis presents the costs and benefits – including the effects on efficiency, competition, and capital formation – that will result from the new recordkeeping, reporting, notification, and securities count rules for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs and from the amendments to Rules 17a-3, 17a-4, 17a-5, 17a-11 and 17a-12 with respect to firms that are registered as broker-dealers. The costs and benefits of adopting these new rules and rule amendments are discussed below and have informed the policy choices described throughout this release.

As discussed more fully in section II. above, pursuant to Sections 15F and 17(a) of the Exchange Act, the Commission is amending Rules 17a-3, 17a-4, 17a-5, 17a-11, and 17a-12 to establish recordkeeping, reporting, and notification requirements for broker-dealers, including broker-dealer SBSDs and MSBSPs to account for their security-based swap activities. Pursuant to Section 15F of the Exchange Act, the Commission is adopting new Rules 18a-5 through 18a-9 to establish recordkeeping, reporting, and notification requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, and securities count requirements for stand-alone SBSDs. Further, pursuant to Sections 15F and 17(a) of the Exchange Act, the Commission is amending FOCUS Report Part II that consolidates proposed Form SBS and existing FOCUS Report Parts II, IIB, and II CSE that will be filed by nonbank SBSDs, nonbank MSBSPs, stand-alone broker-dealers, and stand-alone OTC derivatives dealers to report financial information. The Commission is adopting FOCUS Report Part IIC for bank SBSDs and MSBSPs to report their financial information because these entities will be required to provide more limited information relative to other SBSDs and MSBSPs. The Commission believes these rules and rule amendments will help regulators determine whether relevant market participants comply with the recently adopted capital, margin, and segregation requirements.⁸¹⁷

⁸¹⁷ See *Capital, Margin, and Segregation Adopting Release*, 84 FR 43872.

As discussed above, the Commission is establishing limited and full alternative compliance mechanisms. The limited alternative compliance mechanism in Rules 17a-3 and 18a-5 will allow an SBSB or MSBSP that also is registered with the CFTC as a swap dealer or major swap participant to comply with the requirements to make and keep certain current trade blotters, customer account ledgers, and stock records solely with respect to required information regarding security-based swaps by complying with the requirements of the CEA and the rules thereunder applicable to swap dealers and major swap participants if the SBSB or MSBSP meets certain conditions.⁸¹⁸

The Commission is amending the full alternative compliance mechanism in existing Rule 18a-10 that permits certain SBSBs that are registered as swap dealers and that predominantly engage in a swaps business to elect to comply with the capital, margin, and segregation requirements of the CEA and the CFTC's rules in lieu of complying with the capital, margin, and segregation requirements in Rules 18a-1, 18a-3, and 18a-4. The amendments to Rule 18a-10 will permit firms that will operate under Rule 18a-10 to elect to comply with the recordkeeping and reporting requirements of the CEA and the CFTC's rules in lieu of complying with Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9.⁸¹⁹ The Commission believes the availability of the alternative compliance mechanisms will promote harmonization with CFTC requirements and reduce compliance costs for eligible SBSBs and MSBSPs.

Additionally, as discussed above, the Commission is amending Rule 3a71-6 to provide non-U.S. stand-alone SBSBs and non-U.S. stand-alone MSBSPs with the potential to utilize substituted compliance with comparable foreign requirements to satisfy the recordkeeping and reporting requirements of Section 15F of the Exchange Act and Rules 18a-5, 18a-6, 18a-7, 18a-8 and 18a-9 thereunder.⁸²⁰ The Commission believes that allowing for the possibility of substituted compliance will help achieve the benefits of the recordkeeping and

⁸¹⁸ See Rule 17a-3, as amended, and Rule 18a-5, as adopted. See also discussion in section II.E.1. of this release.

⁸¹⁹ See Rule 18a-10, as amended. See also discussion in section II.E.2. of this release.

⁸²⁰ See section II.F.2. of this release.

reporting requirements being adopted in this document in a manner that avoids the costs that non-U.S. stand-alone SBSBs and non-U.S. stand-alone MSBSPs would have to bear due to regulatory duplication or conflict.

The sections below present an overview of the security-based swap market, a discussion of the general costs and benefits of the adopted recordkeeping and reporting requirements, and a discussion of the costs and benefits of each amendment and new rule. The Economic Analysis also includes a discussion of the potential effects of the rule amendments and new rules on competition, efficiency, and capital formation. Where possible, the Commission has attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from adopting these rules. At times, however, the Commission is unable to quantify the economic effects because, as explained in detail below, it lacks the information necessary to provide a reasonable estimate, and in those instances, the discussion of the economic effects of the rule or amendment is qualitative in nature.

B. Baseline of Economic Analysis

To assess the economic impact of the final rules described in this release, the Commission employs as a baseline the security-based swap market as it exists at the time of this release, including applicable rules that the Commission already has adopted but excluding rules that the Commission has proposed but not yet finalized. The baseline for analysis includes the statutory provisions that currently govern the security-based swap market pursuant to the Dodd-Frank Act and rules adopted in the Commission's intermediary definitions release,⁸²¹ cross-border release,⁸²² SDR registration release,⁸²³ security-based swap entity registration release,⁸²⁴

⁸²¹ See *Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant"*, 77 FR 30597.

⁸²² See *Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities*, 79 FR 47278.

⁸²³ See *Security-Based Swap Data Repository Registration, Duties, and Core Principles*, Exchange Act Release No. 74246 (Feb. 11, 2015), 80 FR 14438 (Mar. 19, 2015).

⁸²⁴ See *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 80 FR 48964.

Regulation SBSR release and amendments,⁸²⁵ U.S. activity release,⁸²⁶ business conduct release,⁸²⁷ and trade acknowledgment release⁸²⁸ as these statutes and final rules— even if compliance is not yet required — are part of the existing regulatory landscape that market participants expect to govern their security-based swap activity.

Additionally, the baseline includes any recordkeeping and reporting rules currently applicable to participants in the security-based swap market including applicable rules previously adopted by the Commission,⁸²⁹ but excludes the rules and rule amendments addressed in this release. With respect to the minor amendments to Rules 17a-3, 17a-4, 17a-5, 17a-11, and 17a-12, the baseline for purposes of this economic analysis is the current recordkeeping and reporting regime for broker-dealers under such rules.

The following sections provide an overview of aspects of the security-based swap market that are likely to be most affected by the amendments being adopted in this document, as well as elements of the current market structure, such as central clearing and platform trading, that are likely to determine the scope of transactions that will be covered by them.

1. Available Data from the Security-Based Swap Market

The Commission’s understanding of the market is informed, in part, by available data on security-based swap transactions, though the Commission acknowledges that limitations in the data limit the extent to which it is possible to quantitatively characterize the market.⁸³⁰ Since these data do not cover the entire market, the Commission has analyzed market activity using a sample of transactions data that includes only certain

⁸²⁵ See *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 80 FR 14563. See also *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 81 FR 53546.

⁸²⁶ See *Security-Based Swap Transactions Connected With a Non-U.S. Person’s Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception*, Exchange Act Release No. 77104 (Feb. 10, 2016), 81 FR 8598 (Feb. 19, 2016).

⁸²⁷ See *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 FR 29960.

⁸²⁸ See *Trade Acknowledgment and Verification of Security-Based Swap Transactions*, 81 FR 39808.

⁸²⁹ The Commission has temporarily excluded security-based swaps from the definition of “security.” See section III.C. of this release. Thus, for purposes of the Commission’s baseline analysis for broker-dealers, security-based swap activities will be excluded.

⁸³⁰ The Commission also relies on qualitative information regarding market structure and evolving market practices provided by commenters, both in letters and in meetings with Commission staff, and knowledge and expertise of Commission staff.

segments of the market. The Commission believes, however, that the data underlying this analysis provides reasonably comprehensive information regarding single-name credit default swap (“CDS”) transactions and the composition of the participants in the single-name CDS market.

Specifically, the analysis of the current state of the security-based swap market is based on data obtained from the DTCC Derivatives Repository Limited Trade Information Warehouse (“TIW”), especially data regarding the activity of market participants in the single-name CDS market during the period from 2008 to 2017. Although the definition of security-based swaps is not limited to single-name CDS,⁸³¹ single-name CDS contracts make up a majority of security-based swaps, and the Commission believes that the single-name CDS data are sufficiently representative of the market to inform our analysis of the current security-based swap market. According to data published by the Bank for International Settlements (“BIS”), the global notional amount outstanding in single-name CDS was approximately \$4.6 trillion,⁸³² in multi-name index CDS was approximately \$4.4 trillion, and in multi-name, non-index CDS was approximately \$343 billion.⁸³³ The total gross market value outstanding in single-name CDS was approximately \$130 billion, and in multi-name CDS instruments was approximately \$174 billion.⁸³⁴ The global notional amount outstanding in equity forwards and swaps as of December 2017 was \$3.21 trillion, with total gross market value of \$197 billion.⁸³⁵

⁸³¹ While other repositories may collect data on transactions in total return swaps on equity and debt, the Commission does not currently have access to such data for these products (or other products that are security-based swaps). Additionally, the Commission explains below that data related to single-name CDS provides reasonably comprehensive information for the purpose of this analysis.

⁸³² The global notional amount outstanding represents the total face amount used to calculate payments under outstanding contracts. The gross market value is the cost of replacing all open contracts at current market prices.

⁸³³ See BIS, *Semi-annual OTC derivatives statistics at December 2017*, Table 10.1, available at https://www.bis.org/statistics/d10_1.pdf (accessed May 18, 2018).

⁸³⁴ See *id.*

⁸³⁵ These totals include swaps and security-based swaps, as well as products that are excluded from the definition of “swap,” such as certain equity forwards. See *OTC, equity-linked derivatives statistics*, Table D8, available at <https://www.bis.org/statistics/d8.pdf> (accessed May 18, 2018). For the purposes of this analysis, the Commission assumes that multi-name index CDS are not narrow-based index CDS and therefore, do not fall within the *security-based swap* definition. See 15 U.S.C. 78c(a)(68)(A); see also *Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”*; *Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 FR 48208. The Commission also assumes that all instruments reported as equity forwards and swaps are security-based swaps, potentially resulting in underestimation of the proportion of the security-based swap market represented by single-name CDS. Therefore, when measured on the basis of gross notional outstanding single-name CDS contracts appear to constitute roughly 59% of the

The Commission further notes that the data available from TIW does not encompass those CDS transactions that both: (i) do not involve U.S. counterparties;⁸³⁶ and (ii) are based on non-U.S. reference entities. Notwithstanding this limitation, the TIW single-name CDS data should provide sufficient information to permit the Commission to identify the types of market participants active in the security-based swap market and the general pattern of dealing within that market.⁸³⁷

2. Security-Based Swap Market: Market Participants and Activity

The final rules and rule amendments will apply regulatory requirements to security-based swap market participants. The following sections provide information about the security-based swap market, focusing on the subset of participants likely to incur recordkeeping and reporting requirements as a result of these rules and rule amendments and the activities that would be subject to these requirements.

a. Security-Based Swap Dealers

Security-based swap activity is concentrated in a relatively small number of dealers, which already represent a small percentage of all market participants active in the security-based swap market. Based on an analysis of the 2017 single-name CDS data, the Commission's earlier estimates of the number of entities likely to register as security-based swap dealers remain largely unchanged. Of the approximately 50 entities that the

security-based swap market. Although the BIS data reflects the global OTC derivatives market, and not just the U.S. market, the Commission has no reason to believe that these ratios differ significantly in the U.S. market

⁸³⁶ Following publication of the Warehouse Trust Guidance on CDS data access, TIW surveyed market participants, asking for the physical address associated with each of their accounts (*i.e.*, where the account is organized as a legal entity). This physical address is designated the registered office location by TIW. When an account reports a registered office location, the Commission has assumed that the registered office location reflects the place of domicile for the fund or account. When an account does not report a registered office location, the Commission has assumed that the settlement country reported by the investment adviser or parent entity to the fund or account is the place of domicile. Thus, for purposes of this analysis, the Commission has classified accounts as "U.S. counterparties" when they have reported a registered office location in the United States. The Commission notes, however, that this classification is not necessarily identical in all cases to the definition of *U.S. person* under Rule 3a71-3(a)(4).

⁸³⁷ The challenges the Commission faces in estimating measures of current market activity stem, in part, from the absence of comprehensive reporting requirements for security-based swap market participants. The Commission has adopted rules regarding trade reporting, data elements, and public reporting for security-based swaps that are designed to, when fully implemented, provide the Commission with additional measures of market activity that will allow us to better understand and monitor activity in the security-based swap market. *See Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 81 FR 53545.

Commission estimates might register as security-based swap dealers, the Commission believes that it is reasonable to expect 22 to be non-U.S. persons.

Many of these dealers are already subject to other regulatory frameworks under U.S. law based on their role as intermediaries or on the volume of their positions in other products, such as swaps. Persons who will register as SBSBs and MSBSPs are likely also to be engaged in swap activity, which is subject to regulation by the CFTC.⁸³⁸ This overlap reflects the relationship between single-name CDS contracts, which are security-based swaps, and index CDS contracts, which may be swaps or security-based swaps. A single-name CDS contract covers default events for a single reference entity or reference security. Index CDS contracts and related products make payouts that are contingent on the default of index components and allow participants in these instruments to gain exposure to the credit risk of the basket of reference entities that comprise the index, which is a function of the credit risk of the index components. A default event for a reference entity that is an index component will result in payoffs on both single-name CDS written on the reference entity and index CDS written on indices that contain the reference entity. Because of this relationship between the payoffs of single-name CDS and index CDS products, prices of these products depend upon one another,⁸³⁹ creating hedging opportunities across these markets.

These hedging opportunities mean that participants that are active in one market are likely to be active in the other. Commission staff's analysis of approximately 4,358 TIW accounts that participated in the market for single-name CDS in 2017 revealed that approximately 2,936 of those accounts, or 67%, also participated in the market for index CDS. Of the accounts that participated in both markets, data regarding transactions in 2017 suggests that, contingent upon an account transacting in notional volume of index CDS in the top third of

⁸³⁸ See section II. of this release. See also *Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected with a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent*, Exchange Act Release No. 74834 (Apr. 29, 2015), 80 FR 27444, 27458 (May 13, 2015); *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 80 FR at 49000.

⁸³⁹ "Correlation" typically refers to linear relationships between variables; "dependence" captures a broader set of relationships that may be more appropriate for certain swaps and security-based swaps. See, e.g., George Casella and Roger L. Berger, *Statistical Inference* 171 (2002).

accounts, the probability of the same account landing in the top third of accounts in terms of single-name CDS notional volume is approximately 38%; by contrast, the probability of the same account landing in the bottom third of accounts in terms of single-name CDS notional volume is only 5.4%.

The CFTC has adopted recordkeeping and reporting requirements that apply to registered swap dealers. The Commission estimates that approximately 46 of the 50 expected security-based swap dealers will be dually registered with the CFTC and therefore be subject to CFTC requirements.⁸⁴⁰ Accordingly, the recordkeeping baseline for entities that are currently registered with the CFTC as swap dealers or major swap participants includes the activities related to compliance with the CFTC's recordkeeping and reporting requirements for swaps.

Additionally, based on an analysis of TIW data and filings with the Commission, the Commission estimates that 16 market participants that will register as security-based swap dealers have already registered with the Commission as broker-dealers and are thus subject to Exchange Act and FINRA requirements applicable to such entities. As the Commission discusses below, some registered dealers may also be subject to similar requirements in one or more foreign jurisdictions.

Finally, the Commission also notes that it has adopted rules for the registration of security-based swap dealers and major security-based swap participants, although market participants are not yet required to comply with those rules. Thus, there are not yet any security-based swap dealers or major security-based swap participants registered with the Commission.

b. Security-Based Swap Market Activity

As already noted, firms that act as dealers play a central role in the security-based swap market. Based on an analysis of 2017 single-name CDS data in TIW, accounts of those firms that are likely to exceed the security-based swap dealer *de minimis* thresholds and trigger registration requirements intermediated

⁸⁴⁰ See, e.g., *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps (Final Rule)*, 77 FR 35200 (June 12, 2012); *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules*, 77 FR 20128 (Apr. 3, 2012).

transactions with a gross notional amount of approximately \$2.9 trillion, approximately 55% of which was intermediated by the top five dealer accounts.⁸⁴¹

These dealers transact with hundreds or thousands of counterparties. Approximately 21% of accounts of firms expected to register as security-based dealers and observable in TIW have entered into security-based swaps with over 1,000 unique counterparty accounts as of year-end 2017.⁸⁴² Another 25% of these accounts transacted with 500 to 1,000 unique counterparty accounts; 29% transacted with 100 to 500 unique accounts; and 25% of these accounts intermediated security-based swaps with fewer than 100 unique counterparties in 2017. The median dealer account transacted with 495 unique accounts (with an average of approximately 570 unique accounts). Non-dealer counterparties transacted almost exclusively with these dealers. The median non-dealer counterparty transacted with two dealer accounts (with an average of approximately three dealer accounts) in 2017.

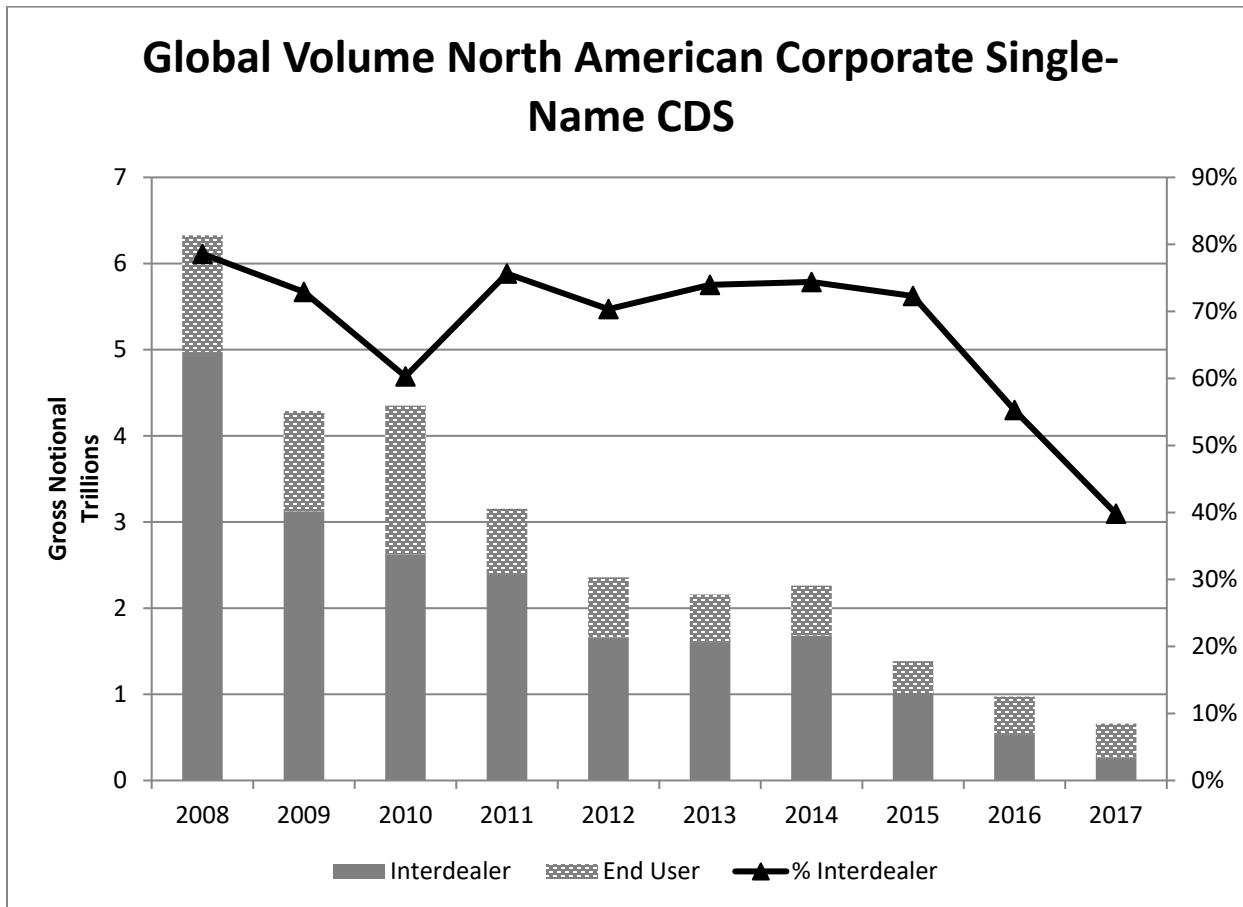
Figure 2 below describes the percentage of global, notional transaction volume in North American corporate single-name CDS reported to TIW between January 2008 and December 2017, separated by whether transactions are between two ISDA-recognized dealers (interdealer transactions) or whether a transaction has at least one non-dealer counterparty. Figure 2 also shows that the portion of the notional volume of North American corporate single-name CDS represented by interdealer transactions has remained fairly constant through 2015 before falling from approximately 72% in 2015 to approximately 40% in 2017. This fall corresponds to the availability of clearing to non-dealers. Interdealer transactions continue to represent a

⁸⁴¹ The Commission staff analysis of TIW transaction records indicates that approximately 99% of single-name CDS price-forming transactions in 2017 involved an ISDA-recognized dealer.

⁸⁴² Many dealer entities and financial groups transact through numerous accounts. Given that individual accounts may transact with hundreds of counterparties, the Commission may infer that entities and financial groups may transact with at least as many counterparties as the largest of their accounts.

significant fraction of trading activity, even as notional volume has declined over the past ten years,⁸⁴³ from more than \$6 trillion in 2008 to less than \$700 billion in 2017.⁸⁴⁴

Figure 2: Global, notional trading volume in North American corporate single-name CDS by calendar year and the fraction of volume that is interdealer.



The high level of interdealer trading activity reflects the central position of a small number of dealers, each of which intermediates trades with many hundreds of counterparties. While the Commission is unable to quantify the current level of trading costs for single-name CDS, these dealers appear to enjoy market power as a result of their small number and the large proportion of order flow that they privately observe.

Against this backdrop of declining North American corporate single-name CDS activity, about half of the trading activity in North American corporate single-name CDS reflected in the set of data that the

⁸⁴³ The start of this decline predates the enactment of the Dodd-Frank Act and the proposal of rules thereunder, which is important to note for the purpose of understanding the economic baseline for this rulemaking.

⁸⁴⁴ This estimate is lower than the gross notional amount of \$4.6 trillion noted above as it includes only the subset of single-name CDS referencing North American corporate documentation.

Commission analyzed was between counterparties domiciled in the United States and counterparties domiciled abroad, as shown in Figure 3 below. Using the self-reported registered office location of the TIW accounts as a proxy for domicile, the Commission estimates that only 12% of the global transaction volume by notional volume between 2008 and 2017 was between two U.S.-domiciled counterparties, compared to 49% entered into between one U.S.-domiciled counterparty and a foreign-domiciled counterparty and 39% entered into between two foreign-domiciled counterparties.⁸⁴⁵

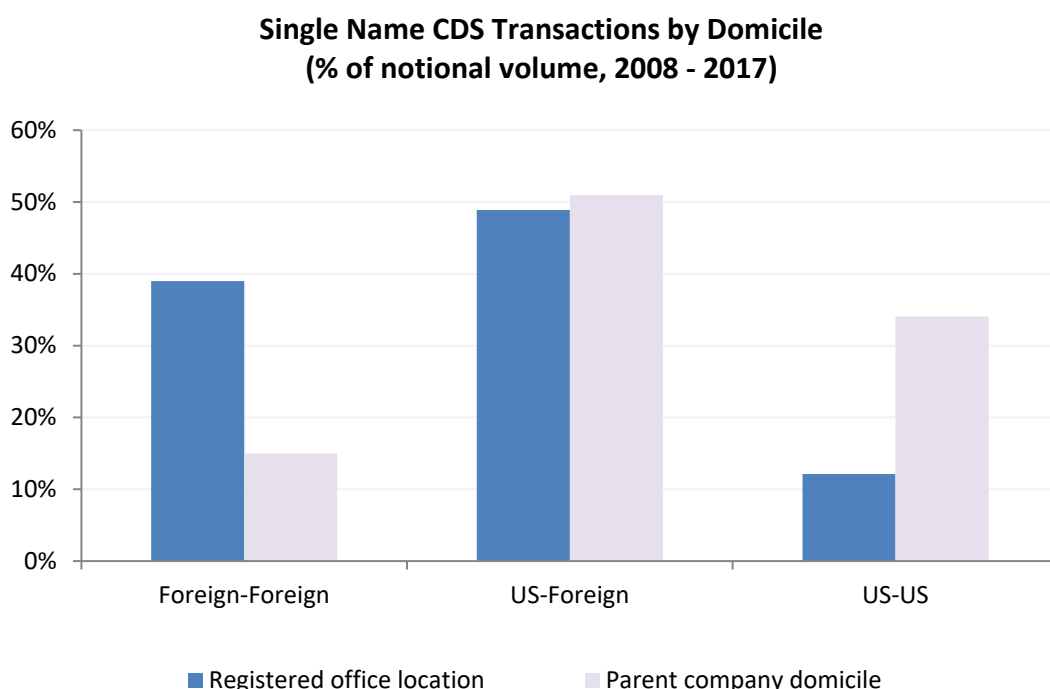
If the Commission instead considers the number of cross-border transactions from the perspective of the domicile of the corporate group (*e.g.*, by classifying a foreign bank branch or foreign subsidiary of a U.S. entity as domiciled in the United States), the percentages shift significantly. Under this approach, the fraction of transactions entered into between two U.S.-domiciled counterparties increases to 34%, and to 51% for transactions entered into between a U.S.-domiciled counterparty and a foreign-domiciled counterparty. By contrast, the proportion of activity between two foreign-domiciled counterparties drops from 39% to 15%. This change in respective shares based on different classifications suggests that the activity of foreign subsidiaries of U.S. firms and foreign branches of U.S. banks accounts for a higher percentage of security-based swap activity than U.S. subsidiaries of foreign firms and U.S. branches of foreign banks. It also demonstrates that financial groups based in the United States are involved in an overwhelming majority (approximately 85%) of all reported transactions in North American corporate single-name CDS.

Financial groups based in the United States are also involved in a majority of interdealer transactions in North American corporate single-name CDS. Of the 2017 transactions on North American corporate single-name CDS between two ISDA-recognized dealers and their branches or affiliates, 94% of transaction notional volume involved at least one account of an entity with a U.S. parent. The Commission notes, in addition, that a majority of North American corporate single-name CDS transactions occur in the interdealer market or between

⁸⁴⁵ For purposes of this discussion, the Commission has assumed that the registered office location reflects the place of domicile for the fund or account, but this domicile does not necessarily correspond to the location of an entity's sales or trading desk. *See Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception*, 81 FR at 8607, n. 83.

dealers and foreign non-dealers, with the remaining portion of the market consisting of transactions between dealers and U.S.-person non-dealers. Specifically, 60% of North American corporate single-name CDS transactions involved either two ISDA-recognized dealers or an ISDA-recognized dealer and a foreign non-dealer. Approximately 39% of such transactions involved an ISDA-recognized dealer and a U.S.-person non-dealer.

Figure 3: The fraction of notional volume in North American corporate single-name CDS between (1) two U.S.-domiciled accounts; (2) one U.S.-domiciled account and one non-U.S.-domiciled account; and (3) two non-U.S.-domiciled accounts, computed from January 2008 through December 2017.



c. Participation of Banks and Broker-Dealers

A high degree of concentration is equally prevalent in derivatives activity within the U.S. banking system: according to the OCC, at the end of the fourth quarter of 2017, derivatives activity in the U.S. banking system continues to be dominated by a small group of large financial institutions. Four large commercial banks represent 89.4% of the total banking industry notional amounts and 85.9% of industry net current credit

exposure.⁸⁴⁶ This concentration largely appears to reflect the fact that larger entities are well-capitalized and therefore possess competitive advantages in engaging in dealing activities by providing potential counterparties with adequate assurances of financial performance.⁸⁴⁷

Other than OTC derivatives dealers, which are subject to significant limitations on their activities, broker-dealers historically have not participated in a significant way in security-based swap trading.

Table 1. The number and percentage of account holders—by type—who participate in the security-based swap market through a registered investment adviser, an unregistered investment adviser, or directly as a transacting agent, from November 2006 through December 2017.

Account Holders by Type	Number	Represented by a registered investment adviser		Represented by an unregistered investment adviser		Participant is transacting agent ⁸⁴⁸	
Private Funds	3,857	1,973	51%	1,859	48%	25	1%
DFA Special Entities	1,319	1,262	96%	37	3%	20	2%
Registered Investment Companies	1,159	1,082	93%	73	6%	4	0%
Banks (non-ISDA-recognized dealers)	349	20	6%	8	2%	321	92%
Insurance Companies	301	196	65%	34	11%	71	24%
ISDA-Recognized Dealers	91	0	0%	0	0%	91	100%
Foreign Sovereigns	83	63	76%	3	4%	17	20%
Non-Financial Corporations	75	52	69%	4	5%	19	25%
Finance Companies	20	11	55%	0	0%	9	45%
Other/Unclassified	5,883	3,745	64%	1,887	32%	251	4%
All	13,137	8,404	64%	3,905	30%	828	6%

⁸⁴⁶ See OCC, *Quarterly Report on Bank Trading and Derivatives Activities, Fourth Quarter 2017* (available at <https://www.occ.treas.gov/topics/capital-markets/financial-markets/derivatives/pub-derivatives-quarterly-qtr4-2017.pdf>).

⁸⁴⁷ See, e.g., Craig Pirrong, *Rocket Science, Default Risk and The Organization of Derivatives Markets*, (Working Paper 17–18, 2006), available at <http://www.cba.uh.edu/spirrong/Derivorg1.pdf> (noting that counterparties seek to reduce risk of default by engaging in credit derivative transactions with well-capitalized firms). See also *Further Definitions of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,”* 77 FR at 30739–42.

⁸⁴⁸ This column reflects the number of participants who are also trading for their own accounts.

3. Existing Regulation of OTC Derivatives Market Participants and Broker-Dealers

As discussed above, the adopted rules and amendments will apply to various different entities that the Commission anticipates will register as SBSDs or MSBSPs, including stand-alone firms, banks, and registered broker-dealers. In addition, the adopted amendments will also apply to certain stand-alone broker-dealers that do not register as an SBSD or MSBSP but nonetheless still engage in security-based swap transactions. For all of these entities, the economic baseline includes the reports and records these firms currently generate in the ordinary course of their business and in anticipation of regulatory reporting requirements, such as Regulation SBSR's requirement for SBSDs and MSBSPs to report each security-based swap transaction to a registered SDR⁸⁴⁹ and to establish, maintain, and enforce written policies and procedures that are designed to ensure compliance with security-based swap transaction reporting obligations.⁸⁵⁰ Because compliance with registration rules for SBSDs and MSBSPs is not yet required,⁸⁵¹ however, there are no entities of any type currently registered as SBSDs or MSBSPs and the Commission can only arrive at an estimate of the number and type of these registrants based on an analysis of the 2017 single-name CDS data.⁸⁵²

Below, the Commission summarizes, based on available information, the current recordkeeping, reporting, notification, and securities count practices of these various entities, including those practices that are required by regulation and those that have been independently adopted by the entities.

a. Stand-alone SBSDs and MSBSPs

Certain firms that are neither banks nor broker-dealers that participate in the market for security-based swaps will register with the Commission as stand-alone SBSDs and MSBSPs. The Commission believes that firms engaged in the security-based swap market currently produce, as part of their ordinary business practices,

⁸⁴⁹ See *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 81 FR 53545. While the Commission recognizes that SBSDs and MSBSPs are not yet required to comply with Regulation SBSR, the Commission nevertheless believes that these firms have invested in reporting infrastructure in anticipation of future regulatory reporting requirements.

⁸⁵⁰ See *id.*

⁸⁵¹ See *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 80 FR 48964.

⁸⁵² See section V.B.2.a. of this release for the Commission's estimates of the potential number of registrants based on an analysis of the 2017 single-name CDS data.

financial reports such as a balance sheet and a quarterly and year-end income statement that are included in the financial reporting requirements the Commission is adopting in this document. Such firms may not, however, produce annual audited financial statements, as required under the adopted rules. The Commission also believes that firms engaged in the security-based swap business currently maintain records documenting the firms' derivatives positions to facilitate, among other things, effective risk management. The Commission expects that these firms maintain these records for the duration for which they hold a given position and for some period of time thereafter. Moreover, the Commission believes that firms that eventually register with the Commission as SBSBs or as MSBSPs will likely create transaction records to submit to registered SDRs as a result of their anticipated reporting obligations under Regulation SBSR and will likely have order management systems in place to record information that is required to be submitted under Regulation SBSR.

Given that the Commission has not previously regulated these firms, the Commission does not have information regarding the recordkeeping and reporting costs these nonbank and non-broker-dealer firms presently incur in the ordinary course of business. As noted above, the Commission believes that these firms, however, maintain some records documenting their business activities as a matter of routine business practice and maintain some transaction records in anticipation of their reporting obligations under Regulation SBSR. Any new costs imposed by the new rules should be incremental to the costs currently being incurred by these entities.

b. Bank SBSBs and MSBSPs

In addition to stand-alone SBSBs and MSBSPs, the Commission expects certain banks to register as SBSBs and MSBSPs. The economic baseline for banks that participate in the security-based swap market includes the existing recordkeeping, record retention, reporting, and notification requirements that are imposed on banks by their relevant prudential regulator as well as the reports and records these firms currently generate in the ordinary course of their business.

Prudential regulators already subject banks to recordkeeping and retention requirements.⁸⁵³ In addition, banks must file financial statements and supporting schedules known as “call reports” with their prudential regulator.⁸⁵⁴ The Commission believes that the most common form of call report for a bank that will register as an SBSB or MSBSP is FFIEC Form 031.⁸⁵⁵ Like the FOCUS Report, FFIEC Form 031 elicits financial and operational information about a bank, which is entered into uniquely numbered line items. A bank must report details about its assets, liabilities, and equity capital on Schedule RC to FFIEC Form 031.⁸⁵⁶ A bank must also report details about its regulatory capital on Schedule RC-R to FFIEC Form 031.⁸⁵⁷ The information elicited on Schedule RC-R is designed to facilitate an analysis of the bank’s regulatory capital. A bank must report details about its income (loss) and expenses on Schedule RI to FFIEC Form 031.⁸⁵⁸

The Commission has estimated the cost of the existing recordkeeping, record retention, reporting, and notification requirements that are applicable to nationally chartered banks under existing regulations issued by the OCC. The Commission arrived at the estimate by examining PRA collections to which national banks are subject and selecting those that are analogous to the recordkeeping, record retention, reporting, and notification rules the Commission is adopting herein.⁸⁵⁹ The Commission then estimated that reporting burdens generate approximately \$79/hour of cost for national banks and that recordkeeping burdens generate approximately

⁸⁵³ See, e.g., 12 CFR 12.3 (Department of Treasury); 12 CFR 219.21 through 219.24 (FDIC); 12 CFR 344.4 (FDIC).

⁸⁵⁴ See 12 U.S.C. 324; 12 U.S.C. 1817; 12 U.S.C. 161; 12 U.S.C. 1464.

⁸⁵⁵ FFIEC Form 031 is filed by banks with domestic and foreign offices, which the Commission believes will characterize most bank SBSBs.

⁸⁵⁶ See FFIEC Form 031, Schedule RC, *Balance Sheet*, Lines 1–29. Schedule RC also has a Memoranda section that which elicits information about bank’s external auditors and fiscal year end date. See FFIEC Form 031, Schedule RC, *Balance Sheet*, Memoranda, Lines 1–2.

⁸⁵⁷ See FFIEC Form 031, Schedule RC-R, *Regulatory Capital*, Lines 1–62. Schedule RC-R also has a “Memoranda” section that elicits detail about derivatives. See FFIEC Form 031, Schedule RC-R, *Regulatory Capital*, Memoranda, Lines 1–2.

⁸⁵⁸ See FFIEC Form 031, Schedule RI, *Income Statement*, Lines 1–14. Schedule RI also has a “Memoranda” section that elicits further detail about income (loss). See FFIEC Form 031, Schedule RI, *Income Statement*, Memoranda, Lines 1–14.

⁸⁵⁹ PRA collections for OCC-regulated national banks, together with PRA collections for other Federal regulatory agency rules, are available at www.reginfo.gov/public/do/PRAMain. Given that different banks comply with different prudential regulations, the Commission recognizes that the estimate based on OCC regulations represents one estimate of the costs imposed on banks by currently applicable recordkeeping, record retention, reporting and notification requirements.

\$30/hour of cost for national banks.⁸⁶⁰ The Commission estimates that national banks currently incur annual costs of \$55,982,398 to comply with the OCC’s financial reporting, notification and recordkeeping rules.⁸⁶¹ The OCC’s rules generally relate to banking activities, not securities and security-based swap activities. The Commission thus recognizes that some of the costs reflected in the OCC’s rules may not be analogous to costs

⁸⁶⁰ This assumption is derived from OCC staff’s description of the hourly costs it estimates in connection with Paperwork Reduction Act burdens. For the purposes of this Economic Analysis, the Commission assumes that reporting burdens will be performed 5% by clerical staff at \$20 an hour, 10% by managerial or technical staff at \$40 an hour, 55% by senior management at \$80 an hour, and 30% by legal counsel at \$100 an hour, which, in the aggregate, equals \$79 an hour. The Commission assumes that recordkeeping burdens will be performed 70% by clerical staff at \$20 an hour, 20% by managerial or technical staff at \$40 an hour, and 10% by senior management at \$80 an hour, which in the aggregate, equals \$30 an hour.

⁸⁶¹ The Commission derived the estimates of the hourly burden associated with these OCC rules from the number of hours approved for information collection purposes by the OMB. See the chart below for a representation of the calculation methodology:

Reporting / Recordkeeping	Annual Hourly Industry Burden	Compensation Rate (per hour)	Estimated Annual Cost
Interagency Call Report (FFIEC 031 and 041)	406,141	\$79	\$32,085,139
Foreign Branch Call Report (FFIEC 041)	4,651	\$79	\$367,429
Country Exposure Report (FFIEC 009)	8,384	\$79	\$662,336
Exchange Act Disclosures Reported to the OCC	523	\$79	\$41,317
Recordkeeping Requirements for Securities Transactions	6,944	\$30	\$208,320
Disclosure of Financial and Other Information	669	\$79	\$52,851
Interagency Guidance on Asset Securitization Activities	778	\$30	\$23,340
Advanced Capital Adequacy Framework Reporting	137,500	\$79	\$10,862,500
Liquidity Risk Report	43,992	\$79	\$3,475,368
General Reporting and Recordkeeping by Savings Associations	61,362	\$30	\$1,840,860
Notice or Application for Capital Distributions	546	\$79	\$43,134
Annual Stress Test Rule and Stress Test Reporting Templates	73,876	\$79	\$5,836,204
Recordkeeping and Disclosure Provisions Associated with Stress Testing Guidance	16,120	\$30	\$483,600
Total Costs			\$55,982,398

that may be imposed by the Commission's new rules. Nonetheless, these cost estimates may help provide context and cost ranges with respect to the nationally chartered banks impacted by the Commission's new rules.

c. Broker-Dealers, SBSB Broker-Dealers, and MSBSP Broker-Dealers

As noted above, the Commission expects some broker-dealers to register as broker-dealer SBSBs or broker-dealer MSBSPs, while other broker-dealers engaging in security-based swap transactions may be subject to regulation as stand-alone broker dealers. A broker-dealer that engages in security-based swap activities is currently subject to existing regulatory requirements, including capital, margin, segregation, recordkeeping, reporting, notification, and securities count requirements.⁸⁶² Specifically, the existing broker-dealer capital requirements make it relatively costly for broker-dealers to conduct security-based swap activities in broker-dealers.⁸⁶³ Instead of occurring at broker-dealers, security-based swap dealing activity is currently mostly concentrated in entities that are affiliated with broker-dealers, but not in broker-dealers themselves.⁸⁶⁴

As of December 31, 2018, there were 3,764 broker-dealers registered with the Commission. The broker-dealers registered with the Commission vary significantly in terms of their size, business activities, and the complexity of their operations.⁸⁶⁵ The Commission estimates that as of December 31, 2018, ten broker-dealers dominated the broker-dealer industry, holding over half of all the capital held by broker-dealers.⁸⁶⁶

Broker-dealers registered with the Commission are currently subject to recordkeeping, reporting, notification, and securities count requirements. The baseline for the economic analysis for registered broker-dealers includes Rules 17a-3, 17a-4, 17a-5, 17a-11, and 17a-12 as they existed prior to these amendments as

⁸⁶² OTC derivatives dealers are a special class of broker-dealers that are exempt from certain broker-dealer requirements, including membership in an SRO, regular broker-dealer margin rules, and application of SIPA. OTC derivatives dealers are subject to special requirements, including limitations on the scope of their securities activities, specific internal risk management control systems, recordkeeping obligations, and reporting responsibilities. They are also subject to alternative net capital treatment. *See* 17 CFR 240.15a-1.

⁸⁶³ *See Capital, Margin, and Segregation Proposing Release*, 77 FR at 70217–257.

⁸⁶⁴ *See ISDA Margin Survey 2015*.

⁸⁶⁵ *See Broker-Dealer Reports*, 78 FR at 51967.

⁸⁶⁶ Using data from FOCUS Reports filed by broker-dealers in 2018, total aggregate capital summed across 3,764 broker-dealer was \$391,515 million of which the ten largest broker-dealers totaled \$206,736 million, or 52.8%. This is consistent with estimates previous reported by the Commission. *See Broker-Dealer Reports*, 78 FR at 51968.

well as any reports and records these firms currently generate in the ordinary course of their business. Below, the Commission discusses the obligations these existing rules currently place on registered broker-dealers.

i. Existing Rules 17a-3 and 17a-4

The Commission is adopting amendments to Rules 17a-3 and 17a-4 to establish additional recordkeeping requirements for broker-dealer SBSBs, broker-dealer MSBSBs,⁸⁶⁷ and broker-dealers that conduct security-based swap activities but are not registered as SBSBs.⁸⁶⁸ Under existing Rule 17a-3, broker-dealers must make and keep certain books and records. The Commission estimates that Rule 17a-3 currently imposes \$218,361,917 of annual costs on broker-dealers.⁸⁶⁹ Rule 17a-4 currently requires that firms preserve the records made and kept under Rule 17a-3, as well as additional records, including written agreements, communications relating to its business as such, and records reflecting inputs into the FOCUS Report. The rule also establishes retention periods for all records required under Rule 17a-3 and required to be preserved under Rule 17a-4, along with storage media requirements for those firms that preserve records electronically. The Commission estimates that current Rule 17a-4 imposes \$86,220,558 of annual costs on broker-dealers.⁸⁷⁰

ii. Existing Rule 17a-5

The existing broker-dealer financial reporting requirements appear in Rule 17a-5. The baseline for this economic analysis with respect to the amendments to Rule 17a-5 is the broker-dealer financial reporting

⁸⁶⁷ See section II.A.2. of this release.

⁸⁶⁸ The amendments to the recordkeeping and reporting rules will apply to all broker-dealers that conduct security-based swap activities. The *de minimis* exception applies solely to registration as an SBSB. See 17 CFR 240.3a71-2(a)(1).

⁸⁶⁹ (2,763,612 hours x \$63 per hour national hourly rate for a compliance clerk) + \$44,254,361 in external costs = \$218,361,917. See Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-3* (Mar 9, 2017), available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=72125401>.

⁸⁷⁰ (1,042,866 hours x \$63 per hour national hourly rate for a compliance clerk) + \$20,520,000 in external costs = \$86,220,058. See Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-4* (Oct. 19, 2016), available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=68823501>.

requirements as they exist prior to the amendments being adopted in this document. The Commission estimates that current Rule 17a-5 imposes \$140,225,396 of annual costs on broker-dealers.⁸⁷¹

Rule 17a-5 has two main elements: (1) broker-dealers must file periodic unaudited reports containing information about their financial and operational condition on a FOCUS Report; and (2) broker-dealers must annually file financial statements and certain reports and a report covering the financial statements and reports prepared by an independent public accountant registered with the PCAOB in accordance with PCAOB standards.⁸⁷² In addition to these two main elements, a few other aspects of Rule 17a-5 are described below.

a. Periodic Reports

Broker-dealers periodically report information about their financial and operational condition on FOCUS Report Part II, Part IIA, Part IIB, or Part II CSE. Each version of the report is designed for a particular type of broker-dealer and the information to be reported is tailored to the type of broker-dealer.⁸⁷³

b. Annual Audited Reports and Related Notifications

Under paragraphs (d) and (g) of Rule 17a-5, a broker-dealer is required to, among other things, annually file reports with the Commission that are audited by a PCAOB-registered independent public accountant, disclose certain financial information to customers, notify the Commission of a change of accountant, and notify the Commission of a change in its fiscal year.⁸⁷⁴ Paragraph (h) of Rule 17a-5 also requires the independent public accountant to notify the broker-dealer if the accountant discovers an instance of non-compliance with certain broker-dealer rules or determines that any material weakness exists.

⁸⁷¹ (353,509 hours x \$269 per hour national hourly rate for a compliance manager) + \$45,131,475 in external costs = \$140,225,396. See *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-5* (May. 26, 2017), available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=74209001>

⁸⁷² See *id.* These requirements are described in more detail below.

⁸⁷³ A broker-dealer that holds customer funds or securities completes and files FOCUS Report Part II. A broker-dealer that does not hold customer funds or securities completes and files FOCUS Report Part IIA. An OTC derivatives dealer completes and files FOCUS Report Part IIB. An ANC broker-dealer completes and files FOCUS Report Part II CSE.

⁸⁷⁴ Paragraph (n)(2) of Rule 17a-5 requires that the notice contain a detailed explanation for the reasons for the change and requires that changes in the filing period for the annual reports be approved in writing by the broker-dealer's DEA.

c. Customer Statements

Paragraph (c) of Rule 17a-5 requires, among other things, that certain broker-dealers annually send their customers audited and unaudited statements regarding their financial condition. Under paragraph (c)(5), a broker-dealer is exempt from sending the statement of financial condition to customers if the broker-dealer, among other things: (1) sends its customers semi-annual statements relating to the firm's net capital and, if applicable, the identification of any material weaknesses; and (2) makes the statement of financial condition described above available on the broker-dealer's website home page and maintains a toll-free number that customers can call to request a copy of the statement.

d. Additional ANC Broker-Dealer Reports

Paragraph (a)(6) of Rule 17a-5 requires ANC broker-dealers to periodically file certain reports with the Commission. The reports contain information related to the ANC broker-dealers' use of internal models to calculate market and credit risk charges when computing net capital.

iii. Existing Rule 17a-11

The existing broker-dealer notice requirements are contained in Rule 17a-11. The baseline for this economic analysis with respect to the amendments to Rule 17a-11 is the broker-dealer notification requirements as they exist today. Rule 17a-11 specifies the circumstances under which a broker-dealer must notify the Commission and other securities regulators about its financial or operational condition, as well as the form that the notice must take. The Commission estimates that current Rule 17a-11 imposes \$90,115 of annual costs on broker-dealers in the aggregate.⁸⁷⁵

a. Failure to Meet Minimum Capital Requirements

Paragraph (b) of Rule 17a-11 requires a broker-dealer to notify the Commission if the firm's net capital or, if applicable, tentative net capital declines below the minimum amount required under Rule 15c3-1.

⁸⁷⁵ 335 hours x \$269 per hour national hourly rate for a compliance manager = \$90,115. See *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-11* (Jul. 28, 2017), available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=75553601>

b. Early Warning of Potential Capital or Model Problem

Paragraph (b)(2) of Rule 17a-11 requires an OTC derivatives dealer or an ANC broker-dealer to notify the Commission when its tentative net capital falls below the minimum required for these types of broker-dealers. Paragraph (c) of Rule 17a-11 specifies four events that, if they occur, trigger a requirement that a broker-dealer send notice promptly (but within twenty-four hours) to the Commission. These notices are designed to provide the Commission with an “early warning” that the broker-dealer may experience financial difficulty.⁸⁷⁶ The events triggering the early warning notification requirements are:

- The computation of a broker-dealer subject to the aggregate indebtedness standard of Rule 15c3-1 shows that the firm’s aggregate indebtedness is in excess of 1,200% of its net capital;⁸⁷⁷
- The computation of a broker-dealer which has elected to use the alternative standard of calculating net capital under Rule 15c3-1 shows that the firm’s net capital is less than 5% of aggregate debit items computed in accordance with Exhibit A of Rule 15c3-3;⁸⁷⁸
- A broker-dealer’s net capital computation shows that its total net capital is less than 120% of its required minimum level of net capital or of its required minimum level of tentative net capital, in the case of an OTC derivatives dealer;⁸⁷⁹
 - With respect to an OTC derivatives dealer, the occurrence of the fourth and each subsequent backtesting exception under 17 CFR 240.15c3-1f (appendix F of Rule 15c3-1) during any 250 business days measurement period.⁸⁸⁰

c. Failure to Make and Keep Current Books and Records

Paragraph (d) of Rule 17a-11 requires a broker-dealer that fails to make and keep current the books and records required under Rule 17a-3 to notify the Commission of this fact on the same day that the failure arises.

The notice must specify the books and records which have not been made or which are not current. A broker-

⁸⁷⁶ See *Early Warning Rule*, Exchange Act Release No. 32586 (July 7, 1993), 58 FR 37655 (July 13, 1993).

⁸⁷⁷ See paragraph (c)(1) of Rule 17a-11. For certain types of broker-dealers, the minimum net capital requirement is the greater of a fixed-dollar amount specified in the rule and an amount determined by applying a 15-to-1 aggregate indebtedness to net capital ratio. See paragraph (a)(1)(i) of Rule 15c3-1. Consequently, requiring notification when a broker-dealer has a 12-to-1 aggregate indebtedness to net capital ratio provides notice before the firm reaches the minimum 15-to-1 requirement.

⁸⁷⁸ See paragraph (c)(2) of Rule 17a-11. For certain types of broker-dealers, the minimum net capital requirement is the greater of a fixed-dollar amount specified in the rule and an amount determined by applying a 2% of aggregate debit items ratio. See paragraph (a)(1)(i) of Rule 15c3-1. Consequently, requiring notification when a broker-dealer has net capital equal to 5% of aggregate debit items provides notice before the firm reaches the 2% minimum requirement.

⁸⁷⁹ See paragraph (c)(2) of Rule 17a-11.

⁸⁸⁰ See paragraph (c)(4) of Rule 17a-11.

dealer is required to report to the Commission within 48 hours of the original notice what the broker or dealer has done or is doing to correct the situation.

d. Material Weakness

Paragraph (e) of Rule 17a-11 requires a broker-dealer to provide notification about a material weakness as that term is defined in Rule 17a-5. Specifically, paragraph (e) provides that, whenever a broker-dealer discovers or is notified by an independent public accountant of a material weakness as defined in Rule 17a-5, the broker-dealer must: (1) give notice to the Commission within twenty-four hours of the discovery or notification of the material weakness; and (2) transmit a report within forty-eight hours of the notice indicating what the broker-dealer has done or is doing to correct the situation.⁸⁸¹

e. Failure to Make a Required Reserve Deposit

An additional broker-dealer notification is required under Exchange Act Rule 15c3-3, rather than Rule 17a-11. Specifically, under paragraph (i) of Rule 15c3-3, a broker-dealer is required to notify the Commission and its DEA if it fails to make a required deposit into its customer reserve account under Rule 15c3-3.

iv. Existing Rule 17a-12

The Commission is adopting amendments to Rule 17a-12 to require OTC derivatives dealers to file revised FOCUS Report Part II instead of FOCUS Report Part IIB as required by current Rule 17a-12.⁸⁸² The baseline for this economic analysis with respect to amendments to Rule 17a-12 is current Rule 17a-12. The Commission estimates that current Rule 17a-12 imposes an annual burden of \$568,320 in the aggregate.⁸⁸³

⁸⁸¹ See also *Broker-Dealer Reports*, 78 FR at 51939 (discussing amendment of material weakness standard in Rule 17a-5). As discussed above in section II.B.3.a. of this release, the Commission is using the concept of material weakness in Rule 18a-7.

⁸⁸² See section IV.A.5. of this release

⁸⁸³ 1,080 hours x \$269 per hour national hourly rate for a compliance manager = \$290,520 aggregate compliance costs per year and \$277,800 aggregate reporting costs per year. See *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-12/Form X-17A-5 Part IIB* (Feb. 5, 2019), available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=88964601>.

4. Regulation SBSR

Regulation SBSR implements requirements for regulatory reporting and public dissemination of security-based swap transactions set forth in Title VII of the Dodd-Frank Act. Regulation SBSR assigns the reporting side⁸⁸⁴ the obligation of reporting primary and secondary trade information about the transaction to a registered SDR or to the Commission, in the event that there is no registered SDR to accept the report.⁸⁸⁵

Based on historical data the Commission estimated that 300 entities would be required to report transaction information under Regulation SBSR,⁸⁸⁶ including all 50 potential registered SBSDs and all 5 potential registered MSBSPs. As a result of the Regulation SBSR reporting hierarchy, the Commission expected all these SBSDs and MSBSPs to incur reporting obligations because at least one of these 55 potential registrants appeared on either side of the majority of security-based swap transactions.⁸⁸⁷

The Commission believes that SBSDs and MSBSPs will have incurred three categories of costs to comply with Regulation SBSR. First, they would likely have had to establish and maintain an internal order management system (“OMS”) capable of capturing relevant security-based swap transaction information in order for it to be reported. Second, they would have had to implement reporting mechanisms. Third, given that manual processes would likely have been incapable of capturing and reporting the numerous data elements relating to security-based swaps required by Regulation SBSR, SBSDs and MSBSPs would have had to establish an appropriate compliance program and support for operating any OMS and reporting mechanism capable of reporting data within the timeframe set forth by Regulation SBSR.⁸⁸⁸

⁸⁸⁴ Rule 901(a) of Regulation SBSR establishes a reporting hierarchy that specifies the side that has the duty to report a security-based swap to a registered SDR. This entity refers to the “reporting side.” *See Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 80 FR at 14566-67.

⁸⁸⁵ In addition, any security-based swap that is accepted for clearing by a registered clearing agency having its principal place of business in the United States must be reported to a registered SDR, regardless of the registration status or U.S. person status of the counterparties and regardless of where the transaction is executed. *See id.* at 14568.

⁸⁸⁶ *See id.* at 14674.

⁸⁸⁷ *See id.*

⁸⁸⁸ *See id.* at 14701.

To the extent that the same or similar information is needed to comply with the recordkeeping and reporting rules being adopted in this document, market participants can use the infrastructure already in place in anticipation of Regulation SBSR to comply with their recordkeeping and reporting obligations under the current rulemaking. Consistent with prior releases, the Commission believes that once a respondent's reporting infrastructure and compliance systems are in place the marginal burden of reporting transactions would be *de minimis* when compared to the costs of putting those systems in place and maintaining them over time.⁸⁸⁹ Thus the changes implemented in anticipation of compliance with Regulation SBSR are likely to substantially reduce certain compliance related burdens emanating from the recordkeeping, reporting, notification, and securities count rules and rule amendments being adopted in this document. As a result, the Commission's estimates of these burdens⁸⁹⁰ should be viewed as an upper bound of the potential costs of these rules and rule amendments.

5. Global Regulatory Efforts

The global security-based swap market is highly interconnected and highly concentrated.⁸⁹¹ This interconnectedness allows U.S. market participants to use security-based swaps as a tool for sharing financial and commercial risks and to access liquidity across jurisdictional boundaries.⁸⁹² However, these opportunities for risk sharing also represent channels for risk transmission to the U.S. financial system: because dealers facilitate the majority of security-based swap transactions, with bilateral relationships that extend to potentially thousands of counterparties, deficiencies in SBSR records and reports may have outcomes that affect a large number of counterparties and have potentially significant cross-border implications.⁸⁹³

⁸⁸⁹ See *id.* at 14702.

⁸⁹⁰ See section IV.E. of this release.

⁸⁹¹ See *Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception*, 81 FR 8598. See also *Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities*, 79 FR at 47283.

⁸⁹² See *Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception*, 81 FR 8598. See also *Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities*, 79 FR at 47283.

⁸⁹³ See *id.*

In 2009, the G20 Leaders—whose membership includes the United States, 18 other countries, and the European Union (“EU”)—addressed global improvements in the OTC derivatives markets. They expressed their view on a variety of issues relating to OTC derivatives contracts. In subsequent summits, the G20 Leaders have returned to OTC derivatives regulatory reform and encouraged international consultation in developing standards for these markets.⁸⁹⁴

Many SBSDs will likely already be subject to foreign regulation of their security-based swap activities that are similar to regulations that may apply to them pursuant to Title VII, even if the relevant foreign jurisdictions do not classify certain market participants as “dealers” for regulatory purposes. Some of these regulations may duplicate, and in some cases conflict with, certain elements of the Title VII regulatory framework including the recordkeeping and reporting rules being adopted in this document.

C. Analysis of the Adopted Program and Alternatives

In determining appropriate recordkeeping, reporting, notification, and securities count requirements, the Commission assessed and considered a number of different costs and benefits, and the determinations it has made may have a variety of economic consequences for the relevant firms, markets, and the financial system as a whole. As an initial matter, the recordkeeping, reporting, notification, and securities count rules and rule amendments being adopted in this document represent the manner in which SBSDs and MSBSPs will document, report, and retain evidence of their compliance with, among other things, the Commission’s capital, margin, and segregation rules. The Commission believes that these rules, by their nature, will have a more limited economic impact as compared to the Commission’s capital, margin, and segregation rules.

With respect to the likely benefits of the adopted rules and amendments, the recordkeeping, reporting, notification, and securities count requirements are broadly intended to facilitate effective oversight of SBSD and MSBSPs. Requiring registered firms to comply with recordkeeping and reporting rules should help ensure more effective regulatory oversight. The new rules and rule amendments should further help the Commission

⁸⁹⁴ See, e.g., G20 Leaders’ Final Declaration para. 24 (Nov. 2011), available at https://g20.org/wp-content/uploads/2014/12/Declaration_eng_Cannes.pdf.

determine whether an SBSB or MSBSP is operating in compliance with the Exchange Act and the rules thereunder.

The Commission further believes that the required annual audit of nonbank SBSBs' and nonbank MSBSPs' financial statements and the public availability of firms' Statement of Financial Condition will provide customers and counterparties access to financial information that will permit them to better assess the financial condition of firms. While it is difficult to quantify the extent to which lack of information about the financial conditions of other market participants reduces willingness to participate in the security-based swap market, the Commission staff's experience is that market participants' willingness to engage in activities increases when such participants are better able to understand the financial condition of other market participants and counterparties.

The Commission also recognizes that there will be costs associated with the new rules and rule amendments. These costs include the costs of complying with the new rules and rule amendments, for example one-time and ongoing financial reporting costs, and costs associated with ongoing record maintenance. To the extent that costs associated with the new rules and amendments arise from complying with the new requirements, these costs are discussed below in section V.C.2. of this release.

The Commission believes that the new rules and rule amendments will require improvements in technology to meet minimum standards for recordkeeping and reporting. SBSBs and MSBSPs that do not have the technology to store and maintain the information required by the new rules and rule amendments will likely need to invest in technology. While investments in new technology will entail costs for SBSBs and MSBSPs, these technological investments may generate benefits for financial markets at large by helping regulators to more effectively track trading and risk exposure in security-based swaps. Moreover, to the extent that improvements in technology required by the rule and rule amendments also enable SBSBs and MSBSPs to more effectively track their trading and risk exposure in security-based swaps, the cost of these improvements for these entities may be partially offset.

In addition, the rules being adopted in this document, in conjunction with other requirements established under the Dodd-Frank Act, could have a substantial impact on international commerce and the relative competitive position of intermediaries operating in multiple jurisdictions. For example, intermediaries operating in other jurisdictions could be advantaged relative to U.S. competitors if corresponding requirements are not established in other jurisdictions or if the Commission's rules are substantially more stringent and costly than corresponding requirements in other jurisdictions. This could affect the ability of intermediaries and other market participants based in the U.S. to participate in non-U.S. markets and the propensity of non-U.S.-based intermediaries and other market participants to participate in U.S. markets or perform market-facing activities using personnel located in the United States. Accordingly, the reporting, recordkeeping, notification, and security count requirements for security-based swaps being adopted in this document could entail substantial differences in the costs of compliance between the U.S. and foreign jurisdictions and could therefore have international implications in terms of the extent of market participation in U.S. versus non-U.S. jurisdictions.⁸⁹⁵

In certain instances it is difficult to quantify the potential benefits and costs of the new rules and rule amendments. For example, firms that choose to register in some capacity as an SBSB or MSBSP may not currently be subject to Commission, CFTC, or prudential regulation. The Commission does not have comprehensive information about such firms' current recordkeeping, reporting, notification, and securities count practices with respect to their security-based swap activities and thus it is difficult to reliably gauge the economic effect of the new rules and rules amendments on these firms. With regard to entities that are currently regulated by the Commission and that are likely to be affected by the rules and rule amendments being adopted in this document, the Commission staff's experience with broker-dealers under the existing recordkeeping, reporting, notification, and securities count rules gives it a better understanding of the compliance-related costs

⁸⁹⁵ See *Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to Registration of Security-Based Dealers and Major Security-Based Swap Participants*, 78 FR at 31034.

(such as those related to retaining attorneys, accountants, and other professionals), and in such cases the Commission has prepared below a summary of its estimate of these costs.⁸⁹⁶

The benefits and costs of each adopted rule and amendment, as well as the reasonable alternatives, are discussed in further detail below.

1. Benefits of Recordkeeping, Reporting, Notification, and Securities Count Requirements

a. Requirements to Make and Keep Records

i. Broker-Dealer SBSs, Broker-Dealer MSBSs, and Stand-Alone Broker-Dealers (Amendments to Rule 17a-3)

The Commission is amending existing Rule 17a-3 to account for security-based swap activities of broker-dealers, including broker-dealer SBSs and MSBSs.⁸⁹⁷ The Commission believes that the amendments to Rule 17a-3 will generate valuable information that will assist the Commission to improve the regulatory oversight and documentation of the security-based swap activities of stand-alone broker-dealers, broker-dealer SBSs and MSBSs. For example, requiring these firms to record the UIC of the counterparties in their security-based swap transactions will assist the Commission in accurately determining which parties are involved in the specific security-based swap transactions and will thereby improve the Commission's analysis of the firms' credit and counterparty risk exposures as well as assist in the accurate determination of the firms' aggregate financial exposure to the related parties.

As noted above in section II.A.2. of this release, in practice, the Commission's adoption of a requirement to use UICs for the purposes of Rules 17a-3 and 18a-5 means that until such time as the Commission recognizes any other IRSS, registrants will be required to use LEIs as requested by commenters.⁸⁹⁸

⁸⁹⁶ See section V.C.2. of this release.

⁸⁹⁷ See, e.g., paragraph (a)(1) of Rule 17a-3, as amended (addition of information that must be included in security-based swap purchase and sale blotters). See also section II.A.2. of this release for a discussion of the specific requirements in the amendments.

⁸⁹⁸ While the Commission to date has only recognized the GLEIS as an IRSS, the rules being adopted in this document do not preclude the use of UICs issued by any other organization that is recognized as an IRSS in the future.

As the Commission noted in the Regulation SBSR adopting release, requiring the use of UICs will provide a streamlined way of reporting, disseminating, and interpreting security-based swap information.⁸⁹⁹ The Commission believes Rules 17a-3 and 18a-5 will require few entities that are not already required to obtain UICs under Regulation SBSR to obtain UICs.⁹⁰⁰

The records generated as a result of amendments to Rule 17a-3 will also constitute an important means of determining compliance of market participants with securities laws such as the capital, margin, and segregation rules applicable to SBSDs and MSBSPs. The amendments to Rule 17a-3 will therefore facilitate more effective oversight and surveillance of the participants in and the market for security-based swaps.

ii. Stand-Alone SBSDs, Stand-Alone MSBSPs, Bank SBSDs, and Bank MSBSPs (New Rule 18a-5)

The Commission is adopting new Rule 18a-5 – which is modeled on Rule 17a-3, as amended – to require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to make and keep current certain records.⁹⁰¹ As with Rule 17a-3, under Rule 18a-5, firms are required to document specific attributes of their security-based swap transactions (e.g. the contract price of the security-based swap; the type of security-based swap; the reference security, index or obligor etc.). However, not all of the provisions of Rule 17a-3 are being included as part of Rule 18a-5 because some of Rule 17a-3’s provisions relate to activities that are not expected or permitted of stand-alone SBSDs and MSBSPs not dually registered as a broker-dealer. Similarly, and as described above, the new requirements that apply to bank SBSDs and MSBSPs under new Rule 18a-5 are more limited than the new requirements that apply to stand-alone SBSDs and MSBSPs under the same rule because the Commission’s authority under Section 15F(f)(1)(B)(i) of the Exchange Act is limited to activities related to their business as an SBSD or MSBSP and because banks are already subject to the existing recordkeeping requirements from prudential regulators who are responsible for capital, margin, and other prudential requirements applicable to bank SBSDs and MSBSPs.

⁸⁹⁹ *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 80 FR 14563.

⁹⁰⁰ *See* section V.B.4. of this release.

⁹⁰¹ *See* section II.A.2.a. of this release (describing Rule 18a-5, as adopted).

The Commission believes that new Rule 18a-5 will provide for improved regulatory oversight of the security-based swap activities of stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs. As with the records generated by broker-dealer SBSDs and MSBSPs under the amendments to Rule 17a-3, records generated as a result of new Rule 18a-5 will also constitute an important means of determining compliance of non-broker-dealer SBSDs and MSBSPs with securities laws such as the capital, margin, and segregation rules applicable to SBSDs and MSBSPs and will facilitate the Commission’s regulation of the security-based swap market.⁹⁰²

b. Requirements to Preserve Records

i. Broker-Dealer SBSDs, Broker-Dealer MSBSPs, and Stand-Alone Broker-Dealers (Amendments to Rule 17a-4)

The Commission is adopting amendments to existing Rule 17a-4 – which contains requirements for broker-dealers subject to Rule 17a-3 to preserve certain types of records required to be made and kept current under Rule 17a-3 and prescribes the duration for which and the manner in which these records must be preserved – to account for the security-based swap activities of broker-dealers, including broker-dealer SBSDs and MSBSPs, as well as certain non-substantive amendments.

For example, and as discussed above,⁹⁰³ the Commission is adopting amendments to certain provisions in paragraph (b) of existing Rule 17a-4 to account for security-based swap transactions, and is adopting amendments that require broker-dealers, including broker-dealer SBSDs and MSBSPs, to preserve certain additional records related to security-based swap activities. Further, the Commission is amending the preservation requirement in paragraph (b)(4) of existing Rule 17a-4 to include “recordings of telephone calls required to be maintained pursuant to section 15F(g)(1) of the [Exchange] Act.” The amendment establishes a requirement to preserve for three years telephone calls that a covered firm chooses to record to the extent that the calls are required to be maintained pursuant to Section 15F(g)(1) of the Exchange Act.

⁹⁰² See section V.C.1.a.i. of this release.

⁹⁰³ See section II.A.3.a. of this release (discussing paragraph (b) of Rule 17a-4, as amended).

The Commission believes that by keeping current, preserving and ensuring ready access to the records required under Rule 17a-3, as amended, the amendments to Rule 17a-4 will support the benefits emanating from the amendments to Rule 17a-3. These benefits primarily include improving the Commission's regulatory oversight by ensuring its ability to monitor and review documentation of the security-based swap activities of stand-alone broker-dealers, broker-dealer SBSBs and MSBSBs.

ii. Stand-Alone SBSBs, Stand-Alone MSBSBs, Bank SBSBs, and Bank MSBSBs (New Rule 18a-6)

With respect to stand-alone SBSBs, stand-alone MSBSBs, bank SBSBs, and bank MSBSBs, the Commission is adopting new Rule 18a-6 to establish record preservation requirements for these categories of potential registrants. New Rule 18a-6 is modeled on the record preservation requirements of Rule 17a-4, as amended, but contains modifications to account for the differences applicable to stand-alone SBSBs, stand-alone MSBSBs, bank SBSBs and MSBSBs consistent with their anticipated business activities related to security-based swaps.⁹⁰⁴ Many, but not all, of the same record preservation requirements that are applicable to broker-dealer SBSBs and MSBSBs under the amendments to Rule 17a-4 will also apply to stand-alone SBSBs, stand-alone MSBSBs, bank SBSBs, and bank MSBSBs under new Rule 18a-6. For example, analogous to paragraph (a) of Rule 17a-4, as amended⁹⁰⁵ paragraph (a) of new Rule 18a-6 requires that certain records required to be created and maintained under Rule 18a-5 be preserved for a period of not less than six years, the first two in an easily accessible place.⁹⁰⁶

In response to comments received to the proposing release, the Commission is modifying Rule 18a-6 to eliminate the requirement that the electronic storage system preserve records exclusively in a non-rewriteable and non-erasable format.⁹⁰⁷ The Commission believes that the removal of these requirements will reduce the

⁹⁰⁴ See section II.A.3.a. of this release (discussing Rule 17a-4, as amended, and Rule 18a-6, as adopted).

⁹⁰⁵ See *id.* (discussing Rule 17a-4 record retention requirements).

⁹⁰⁶ See *id.* (discussing requirements for stand-alone SBSBs, stand-alone MSBSBs, bank SBSBs and MSBSBs to maintain and preserve records).

⁹⁰⁷ See section II.A.3.a. of this release (discussing Rule 18a-6 electronic storage requirements).

likelihood that stand-alone or banks SBSDs and MSBSPs will need to maintain an extra set of records, and avoid the associated costs of maintaining those extra records, in order to comply with the rule.⁹⁰⁸ For SBSDs and MSBSPs that are also registered with the CFTC as swap dealers and major swap participants, these modifications to the rule will also eliminate a potential conflict with the requirements of the CFTC.

The Commission believes that by keeping current, preserving, and ensuring ready access to the records required under new Rule 18a-5, new Rule 18a-6 will support the benefits stemming from new Rule 18a-5 without increasing the costs associated with keeping records. These benefits primarily include improving the Commission's regulatory oversight by ensuring its ability to monitor and review documentation of the security-based swap activities of non-broker-dealer SBSDs and MSBSPs.

c. Reporting

The Commission is adopting amendments to existing Rule 17a-5 – which contains requirements for broker-dealers to file periodic unaudited reports containing information about their financial and operational condition and for broker-dealers to file annual financial statements, certain reports and a report covering these financial statements and reports prepared by an independent public accountant registered with the PCAOB in accordance with PCAOB standards –⁹⁰⁹ to account for the security-based swap activities of broker-dealers, including broker-dealer SBSDs and MSBSPs, as well as certain non-substantive amendments. Further, the Commission is adopting new Rule 18a-7 – which is modeled on Rule 17a-5, as amended – to establish reporting requirements for stand-alone SBSDs, SBSDs also registered as OTC derivatives dealers, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs. The Commission believes that the economic effects associated with the new reporting requirements will depend upon the nature of the filings that potential registrants make today based upon their current registration status (e.g., broker-dealer vs. non-broker-dealer).

⁹⁰⁸ The costs to implement an electronic storage system to preserve records in a non-rewriteable and non-erasable format may be substantial. In April 2018, SIFMA reported the results of an anonymous survey of a group of its members about the costs of implementing such a system. Of the 25 respondents, 16 firms had implemented such a system in the previous three years at an average cost of \$6 million with several firms reporting costs in excess of \$25 million. *See* Petition for Rulemaking to Amend Exchange Act Rule 17a-4(f) – Addendum (available at: <https://www.sec.gov/rules/petitions/2018/ptn4-713-addendum.pdf>).

⁹⁰⁹ *See* section II.B.2. of this release (discussing Rule 17a-5 reporting requirements).

i. Stand-Alone Broker-Dealers (Amendments to Rule 17a-5)

As described above, under these rules and rule amendments, stand-alone broker-dealers (including stand-alone OTC derivatives dealers and stand-alone ANC broker-dealers) that engage in security-based swap activities but that do not register with the Commission as an SBSB or MSBSP will be required to complete revised FOCUS Report Part II.⁹¹⁰ FOCUS Report Part II, as amended, largely retains the structure and line items of the FOCUS Report Part II that existed prior to these amendments, but also includes new line items and schedules tailored specifically to security-based swap activities.⁹¹¹ It also largely elicits the same information as FOCUS Report Parts IIB and II CSE.⁹¹² Consequently, broker-dealers that filed the FOCUS Report Part II prior to these amendments, ANC broker-dealers that filed the FOCUS Report Part II CSE, and OTC derivatives dealers that filed the FOCUS Report Part IIB will need to enter into the FOCUS Report Part II, as amended, substantively the same information as was required of them prior to these amendments.

The Commission believes that the information elicited from stand-alone broker-dealers on their security-based swap activities will assist the Commission and the DEAs of these entities to examine them more effectively. The reporting requirements for stand-alone broker-dealers on account of their security-based swap related activities are also expected to promote transparency of the financial and operational condition of these entities to the Commission.

ii. Broker-dealer SBSBs and MSBSPs (Amendments to Rule 17a-5)

The Commission has designed FOCUS Report Part II, as amended, to elicit the information that it believes it needs to effectively oversee the financial condition of broker-dealer SBSBs and MSBSPs. The Commission has carefully considered FOCUS Report Part II, as amended, in light of its experience with broker-dealer regulation and in relation to its new statutory responsibilities under Section 15F of the Exchange Act. The Commission believes that the information elicited in FOCUS Report Part II, as amended, will promote

⁹¹⁰ See *id.* (discussing broker-dealer SBSBs' and broker-dealer MSBSPs' use of revised FOCUS Report Part II).

⁹¹¹ See section II.B.1. of this release.

⁹¹² See *id.*

compliance of the relevant regulated entities with Rules 15c3-1 and 15c3-3 and will assist the Commission, SROs, state securities regulators and the regulated entities' DEAs in conducting effective examinations of these entities. Additionally, the broker-dealer SBSB and broker-dealer MSBSP reporting requirements related to their security-based swap activities should promote transparency of the financial and operational condition of the broker-dealer to the Commission and the firms' DEA. This may, in turn, improve the Commission's ability to value the relevant registrants' security-based swap exposures and assist the Commission in assessing these entities' compliance with rules related to capital requirements.

iii. Stand-alone SBSBs and MSBSPs (New Rule 18a-7)

As described in more detail above,⁹¹³ stand-alone SBSBs and MSBSPs will be required to file FOCUS Report Part II, as amended, with the Commission or its designee on a monthly basis.⁹¹⁴ With respect to their security-based swap activities, stand-alone SBSBs and MSBSPs are required to report information similar to that required of broker-dealer SBSBs. However, these entities are not required to complete the sections applicable only to broker-dealers.

In addition, stand-alone MSBSPs will be required to complete a simpler Computation of Tangible Net Worth, compared to the much longer and more complex Computation of Net Capital and Computation of Minimum Regulatory Capital Requirements sections that stand-alone SBSBs are required to complete.⁹¹⁵ Moreover, stand-alone MSBSPs will not be required to complete the sections in FOCUS Report Part II, as amended, that require firms to compute the amount that must be maintained in the security-based swap customer reserve account or the section relating to information for the possession or control requirements for security-based swap customers because stand-alone MSBSPs generally will not be subject to those requirements

⁹¹³ See section II.B.2. of this release.

⁹¹⁴ The Commission estimates that 9 of the approximately 50 entities that it anticipates to register with the Commission as SBSBs will be stand-alone SBSBs.

⁹¹⁵ Compare FOCUS Report Part II, as amended, *Computation of Tangible Net Worth*, with FOCUS Report Part II, as amended, *Computation of Net Capital (Filer Authorized to Use Models)* and FOCUS Report Part II, as amended, *Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer SBSB)*.

under Rule 18a-4.⁹¹⁶ Furthermore, stand-alone MSBSPs will not be required to complete and file a number of sections of FOCUS Report Part II, as amended, that relate to the operational data related to the firm; specifically, they will not be required to complete and file the Capital Withdrawals, Capital Withdrawals Recap, and the Financial and Operational Data sections of FOCUS Report Part II, as amended.⁹¹⁷ The Commission therefore believes that the economic effects associated with the reporting requirements on stand-alone MSBSPs will be significantly less than the economic effects of the reporting requirements on stand-alone SBSBs.

In addition, stand-alone SBSBs and MSBSPs will be required to generate and file their financial report and, in the case of stand-alone SBSBs, compliance report or exemption report, with the Commission on an annual basis.⁹¹⁸ While the Commission expects that stand-alone SBSBs and MSBSPs currently prepare financial statements that encompass their security-based swap activity, under the new rules, these entities will be required to prepare a financial report in a format consistent with FOCUS Report Part II, as amended, which includes numerous entries, computations, and schedules that a stand-alone SBSB may not currently prepare as a part of its business practices.

For stand-alone SBSBs approved to use models, there will be a number of additional monthly and quarterly reporting requirements, independent of those on FOCUS Report Part II, as amended.⁹¹⁹ The additional reports required of stand-alone SBSBs approved to use models are modeled on parallel reporting requirements for ANC broker-dealers.⁹²⁰ Consequently, stand-alone SBSBs approved to use models will be required to file the same types of additional reports relating to their use of internal models as ANC broker-dealers, including ANC broker-dealer SBSBs.

⁹¹⁶ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 44071-76.

⁹¹⁷ See FOCUS Report Part II, as amended, *Capital Withdrawals, Capital Withdrawals – Recap, and Financial and Operational Data*.

⁹¹⁸ See paragraph (c) of Rule 18a-7, as adopted.

⁹¹⁹ See section II.B.3.a. of this release. See also paragraph (a)(3) of Rule 18a-7, as adopted.

⁹²⁰ Compare paragraph (a)(3) of Rule 18a-7, as adopted, with paragraph (a)(5) of Rule 17a-5, as amended.

The Commission believes that using the new reporting requirements will help the Commission to evaluate whether stand-alone SBSBs and MSBSPs are operating in compliance with the Exchange Act and the rules thereunder. The Commission also believes that the availability of FOCUS Report Part II, as amended, will greatly enhance the Commission's ability to oversee the financial condition of the relevant registrants, and that the public availability of a firm's audited Statement of Financial Condition and net capital computations will facilitate the public's evaluation of the firm's financial health.

In response to comments received to the proposing release, the Commission is modifying Rule 18a-7 so that stand-alone SBSBs and MSBSPs, as well as SBSBs also registered as an OTC derivatives dealers, may engage an independent public accountant that is not registered with the PCAOB, and that the accountant may prepare its reports in accordance with GAAS in the United States or PCAOB standards.⁹²¹ The Commission estimates that of the 9 stand-alone SBSBs, 3 will make use of the full alternative compliance mechanism.⁹²² The Commission estimates that of the 5 MSBSPs, one will also be registered as an FCM. As with Commission registered broker-dealers, CFTC-registered FCMs are required to use independent accountants that are registered with the PCAOB.⁹²³

The Commission estimates that there will be 6 stand-alone SBSBs and 4 MSBSPs that may engage an independent public accountant as a result of Rule 18a-7.⁹²⁴ The Commission estimates the total cost to these 10 entities to engage an accountant as required by Rule 18a-7 to be \$3,018,000.⁹²⁵ Providing these options to these types of SBSBs and MSBSPs will not change the requirement to engage an independent public accountant but

⁹²¹ See section II.B.3.a. of this release for a discussion of why the Commission believes this option is appropriate for stand-alone SBSBs and MSBSPs but not for SBSBs and MSBSPs that are also registered as broker-dealers.

⁹²² See section IV.C. of this release.

⁹²³ See 17 CFR 1.16(b).

⁹²⁴ See section IV.C of this release.

⁹²⁵ $(\$300,000 \text{ per stand-alone MSBSP} \times 4) + \$303,000 \text{ per stand-alone SBSB exempt from Rule 18a-4} \times 6) = \$3,018,000$. See section IV.D.3. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for amendments to Rule 17a-5, as amended, and Rule 18a-7, as adopted).

will increase the number of accountants that could potentially be hired. The Commission believes this could result in lower costs to this group of firms.

iv. Bank SBSBs and MSBSPs (New Rule 18a-7)

As described above,⁹²⁶ bank SBSBs and MSBSPs will be required to periodically complete and file FOCUS Report Part IIC with the Commission. Relative to what broker-dealer SBSBs, broker-dealer MSBSPs, stand-alone SBSBs, and stand-alone MSBSPs will report in FOCUS Report Part II, as amended, bank SBSBs and MSBSPs will report less information on FOCUS Report Part IIC because FOCUS Report Part IIC is tailored specifically to a bank's activities as an SBSB or an MSBSP. Further, FOCUS Report Part IIC elicits financial information that largely derives from the information that banks already report on the call reports that they file with their prudential regulators.⁹²⁷ Finally, unlike broker-dealer SBSBs, broker-dealer MSBSPs, stand-alone SBSBs and MSBSPs, bank SBSBs and MSBSPs will not be required to complete and file an annual audited financial report because this set of potential registrants are currently subject to the reporting requirements administered by their prudential regulators. These reporting requirements include filing of annual audited financial reports.

Consistent with the directive in Section 15F(f) of the Exchange Act, bank SBSBs and MSBSPs will also be required to report, in FOCUS Report Part IIC, details relating to their security-based swap activities. To this end bank SBSBs and MSBSPs will be required to create and maintain additional relevant details about their security-based swap positions. In relation to reporting details about bank SBSBs' or bank MSBSPs' security-based swap positions, the Commission has limited the number of schedules required to be completed and filed by these entities in FOCUS Report Part IIC to one schedule that elicits details about their security-based swap positions. This schedule is also largely derived from the banks' call report.

The Commission believes that the reporting requirements for bank SBSBs and MSBSPs will help the Commission and other regulators ensure that registrants follow applicable capital, margin, and segregation

⁹²⁶ See section II.B.2. of this release.

⁹²⁷ See section II.B.2.b.ii. of this release. See also 12 U.S.C. 324; 12 U.S.C. 1817; 12 U.S.C. 161; 12 U.S.C. 1464.

rules. The Commission believes that such capital, margin, and segregation rules are an integral part of ensuring that security-based swap activity is conducted in a financially responsible manner.

d. Notification Requirements

i. Broker-dealer SBSBs and MSBSPs (Amendments to Rule 17a-11)

The Commission is adopting amendments to existing Rule 17a-11 – which specifies the circumstances under which a broker-dealer must notify the Commission and other securities regulators about its financial or operational condition, as well as the form that the notice must take – to account for the security-based swap activities of broker-dealer SBSBs and MSBSPs.⁹²⁸ Specifically, a broker-dealer SBSB will be required to notify the Commission when it fails to make a deposit in its security-based swap customer account.⁹²⁹

The Commission believes that the amendments to Rule 17a-11 will result in improving Commission and DEA oversight of broker-dealer SBSBs’ and broker-dealer MSBSPs’ security-based swap activities, including activities and financial conditions that suggest a material level of risk to the firm.

ii. Stand-Alone SBSBs, Stand-Alone MSBSPs, Bank SBSBs, and Bank MSBSPs (New Rule 18a-8)

The Commission is adopting new Rule 18a-8 – which is modeled on Rule 17a-11, as amended – to establish notification requirements for stand-alone SBSBs, stand-alone MSBSPs, bank SBSBs, and bank MSBSPs.⁹³⁰ New Rule 18a-8 is modeled closely upon the requirements applicable to broker-dealer SBSBs and MSBSPs. For example, the Commission has included a net capital deficiency and tentative net capital deficiency notification requirement in paragraph (a)(1) of Rule 18a-8 applicable to stand-alone SBSBs that is modeled on the notification requirements applicable to broker-dealers, over-the-counter derivatives dealers, and ANC broker-dealers that appear in paragraph (a) of Rule 17a-11, as amended.⁹³¹ The Commission has also included “early warning” notification requirements in paragraph (b) of Rule 18a-8 that will be applicable to

⁹²⁸ See paragraphs (b)(5), (e), and (f) of Rule 17a-11, as amended.

⁹²⁹ See paragraph (f) of Rule 17a-11, as amended.

⁹³⁰ See Rule 18a-8, as adopted.

⁹³¹ Compare paragraph (a)(1) of Rule 18a-8, as adopted, with paragraph (a) of Rule 17a-11, as amended.

stand-alone SBSBs and MSBSBs and that are modeled after the relevant early warning provisions applicable to broker-dealers in paragraph (b) of Rule 17a-11, as amended.⁹³² Likewise, the requirement for a bank SBSB, bank MSBSB, stand-alone SBSB, or stand-alone MSBSB to notify the Commission in the event that it fails to make and keep current its required books and records is modeled on a similar requirement for broker-dealers.⁹³³

These notification requirements serve an important role in the context of the reporting and recordkeeping rules for broker-dealer SBSBs, broker-dealer MSBSBs, stand-alone SBSBs, stand-alone MSBSBs, bank SBSBs, and bank MSBSBs because they serve to alert the Commission to the fact that certain events are occurring at a registrant that are highly relevant to the registrant's overall ability to continue to meet its obligations to customers and counterparties. For example, a report of a capital deficiency will alert the Commission to the fact that a registrant may lack sufficient capital to continue to operate its business and to meet its obligations to customers and counterparties. The notification requirements are thus critical to helping the Commission fulfill its statutory responsibility to monitor whether SBSBs and MSBSBs are operating in compliance with the Exchange Act and the rules thereunder.⁹³⁴

e. Quarterly Securities Count Requirement for Stand-Alone SBSBs (New Rule 18a-9)

As discussed in greater detail above,⁹³⁵ the Commission is establishing a securities count program for SBSBs under Sections 15F and 17(a) of the Exchange Act that is modeled on Rule 17a-13's securities count program for broker-dealers. More specifically, stand-alone SBSBs will be subject to new Rule 18a-9. For reasons explained above, new Rule 18a-9 will not apply to stand-alone MSBSBs, bank SBSBs, or bank

⁹³² Compare paragraph (b) of Rule 18a-8, with paragraph (b) of Rule 17a-11, as amended.

⁹³³ Compare paragraph (d) of Rule 18a-8, as adopted, with paragraph (c) Rule 17a-11, as amended.

⁹³⁴ See 15 U.S.C. 78o-10(f).

⁹³⁵ See section II.D.1. of this release.

MSBSPs.⁹³⁶ Rule 18a-9 applies substantially all the same affirmative obligations to stand-alone SBSBs that apply to broker-dealers under Rule 17a-13.⁹³⁷

As discussed in the Recordkeeping and Reporting Proposing Release, Rule 17a-13, the model for Rule 18a-9, arose in the aftermath of the 1967-1970 securities industry crisis where deficiencies in broker-dealers' internal controls and procedures for, among other things, adequately checking and counting securities created a serious "paperwork crisis" in the securities markets.⁹³⁸ The Commission believes that instituting a parallel provision will help to avoid a similar problem for stand-alone SBSBs. Moreover, the Commission believes that to the extent a stand-alone SBSB has not invested in the technology necessary to help ensure that it can accurately track and safeguard securities, the rule will require such investments to be made,⁹³⁹ which could improve the quality of such tracking and safeguarding.

2. Costs of the Recordkeeping, Reporting, Notification, and Securities Count Requirements

Compliance with the new rules and rule amendments will impose certain implementation-related costs on SBSBs and MSBSPs, as well as on stand-alone broker-dealers engaged in security-based swap activities. These costs may include start-up costs, including other costs such as those related to personnel and technology. The Commission understands that entities that engage in security-based swap transactions currently already incur costs during their normal business activities and that the new rules and rule amendments will impose incremental costs on such entities. While these incremental costs are not negligible, the Commission believes that they are unlikely to be material.

Based on section IV.D. of this release, the Commission has estimated the implementation-related costs of the new rules and rule amendments for SBSBs, MSBSPs, and stand-alone broker-dealers that engage in

⁹³⁶ *See id.*

⁹³⁷ *Compare* Rule 18a-9, as adopted, *with* Rule 17a-13. Rule 18a-9 omits the exemptions from applicability of the rule that appear in paragraphs (a)(1) through (3) and (e) of Rule 17a-13 because those exemptions relate to broker-dealer-specific functions and broker-dealer registration status.

⁹³⁸ *See Recordkeeping and Reporting Proposing Release*, 79 FR at 25247.

⁹³⁹ *See* section V.C.2. of this release.

security-based swap activities.⁹⁴⁰ The Commission estimates that across all potential SBSBs and MSBSP registrants including stand-alone broker dealers that engage in security-based swap transactions, the initial implementation costs are approximately \$10 million and the ongoing annual costs of implementation are approximately \$9 million.

The following is a breakdown of the estimates of the costs imposed by the different rules and rule amendments being adopted in this document on each of the affected parties.⁹⁴¹

a. Requirements to Make and Keep Records:

i. Broker-Dealer SBSBs, Broker-Dealer MSBSPs, and Stand-Alone Broker-Dealers (Amendments to Rule 17a-3)

Amendments to Rule 17a-3 are estimated to impose a one-time initial cost of approximately \$1,151,320⁹⁴² and an annual ongoing cost of approximately \$216,657⁹⁴³ across the entire industry that includes broker-dealer SBSBs, broker-dealer MSBSPs and stand-alone broker-dealers engaged in security-based swap activities.

ii. Stand-Alone SBSBs, Stand-Alone MSBSPs, Bank SBSBs, and Bank MSBSPs (New Rule 18a-5)

⁹⁴⁰ See section IV.D. of this release (discussing total initial and annual recordkeeping and reporting burdens of the new rules and rule amendments).

⁹⁴¹ The Commission is also adopting technical amendments which it estimates will not impose material additional costs.

⁹⁴² 4,280 hours x \$269 per hour national hourly rate for a compliance manager = \$1,151,320. See section IV.D.1. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a-3). The \$269 per hour figure for a compliance manager is from the Securities Industry and Financial Market Association (“SIFMA”)’s *Management & Professional Earnings in the Securities Industry 2012*, as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

⁹⁴³ 3,439 hours x \$63 per hour national hourly rate for a compliance clerk = \$216,657. See section IV.D.1. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for amendments to Rule 17a-3). The \$63 per hour figure for a compliance clerk is from SIFMA’s *Management & Professional Earnings in the Securities Industry 2012*, as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

The Commission estimates that new Rule 18a-5 will result in a total initial industry cost of \$2,554,740 for non-broker-dealer SBSs and MSBSs.⁹⁴⁴ On an ongoing annual basis, the Commission estimates that new Rule 18a-5 will result in \$791,475 of total industry costs for non-broker-dealer SBSs and MSBSs.⁹⁴⁵

The Commission believes that requiring non-broker-dealer SBSs and MSBSs to comply with more limited recordkeeping requirements relative to broker-dealer SBSs and MSBSs, in keeping with the former entities' more restricted SBS-related business activities, will reduce compliance costs for these entities without compromising the effectiveness of the regulatory oversight achieved by the adopted rules.

Additionally, the Commission has attempted to reduce compliance burdens and to allow firms subject to Rule 18a-5 to take advantage of potential efficiencies by basing new Rule 18a-5 upon existing Rule 17a-3 rather than starting with a wholly new rule. The Commission believes that many non-broker-dealer SBSs and non-broker-dealer MSBSs will be affiliates of broker-dealers that already have familiarity with Rule 17a-3 upon which new Rule 18a-5 is modeled. Greater familiarity with the rule should reduce compliance burdens and costs for these entities. However, the Commission does acknowledge that with respect to entities not so affiliated, this approach is much less likely to ease compliance burdens.

b. Requirements to Preserve Records

i. Broker-Dealer SBSs, Broker-Dealer MSBSs, and Stand-Alone Broker-Dealers (Amendments to Rule 17a-4)

⁹⁴⁴ (9,460 hours x \$269 per hour national hourly rate for a compliance manager) + \$10,000 in external costs = \$2,554,740. *See* section IV.D.1. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for Rule 18a-5, as adopted).

⁹⁴⁵ (11,825 hours x \$63 per hour national hourly rate for a compliance clerk) + \$46,500 in external costs = \$791,475. *See* section IV.D.1. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for Rule 18a-5, as adopted).

The Commission estimates that the amendments to Rule 17a-4 will result in a total initial industry cost of \$1,338,896 to broker-dealers.⁹⁴⁶ On an ongoing annual basis, the Commission estimates that the amendments to Rule 17a-4 will result in \$164,704 in industry costs to broker-dealers.⁹⁴⁷

ii. Stand-Alone SBSBs, Stand-Alone MSBSPs, Bank SBSBs, and Bank MSBSPs (New Rule 18a-6)

The Commission estimates that new Rule 18a-6 will result in \$3,634,864 in terms of initial costs to the industry⁹⁴⁸ and \$750,615 in terms of annual ongoing costs to the industry.⁹⁴⁹

c. Reporting Requirements

i. Broker-Dealer SBSBs, Broker-Dealer MSBSPs, and Stand-Alone Broker-Dealers (Amendments to Rule 17a-5)

The Commission anticipates that there may be additional costs associated with stand-alone broker dealers, broker-dealer SBSBs or broker-dealer MSBSPs completing and filing the annual reports required under paragraph (d) of Rule 17a-5, as amended. For example, the amendments will increase the cost of completing the annual compliance report filed by a broker-dealer SBSB because the compliance report for such firms will include statements about the firms' compliance with Rule 18a-4, the customer segregation rule that will apply to broker-dealer SBSBs.⁹⁵⁰ Similarly, an ANC broker-dealer that currently files FOCUS Report Part II CSE and that registers with the Commission as an SBSB or MSBSP will experience a marginal impact on its reporting

⁹⁴⁶ 4,264 hours x \$314 per hour national hourly rate for a senior database administrator = \$1,338,896. See section IV.D.2. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for amendments to Rule 17a-4). The \$314 per hour figure for a senior database administrator is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012*, as modified by Commission staff to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

⁹⁴⁷ (1,968 hours x \$63 per hour national hourly rate for a compliance clerk) + \$40,720 in external costs = \$164,704. See section IV.D.2. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for amendments to Rule 17a-4, as amended).

⁹⁴⁸ 11,576 hours x \$314 per hour national hourly rate for a senior database administrator = \$3,634,864.

⁹⁴⁹ (8,770 hours x \$63 per hour national hourly rate for a compliance clerk) + (35 hours x \$379 per hour for national hourly rate for an attorney) + \$184,840 in external costs = \$750,615.

⁹⁵⁰ See section II.B.3.a. of this release.

obligations due to new line items and schedules tailored to specifically elicit details about security-based swap activities.⁹⁵¹

The Commission also anticipates that the cost of auditing the annual reports filed by stand-alone broker-dealers, broker-dealer SBSs and MSBSs will rise.⁹⁵² Currently, and as described in more detail above, broker-dealers are required to engage a PCAOB-registered independent public accountant to conduct an annual audit of their annual reports.⁹⁵³ The Commission believes the additional required components of the financial report and the compliance report will increase the costs of ongoing compliance as well as those of the annual audit for these entities.

However, the Commission believes that overall the additional costs imposed by the amendments will be insubstantial because the FOCUS Report Part II, as amended, largely retains the same structure as it existed prior to the amendments. This will reduce uncertainty and avoid additional compliance costs that could stem from devising an entirely new reporting form and rules. Furthermore, the scope of the additional information – generally related to the firms’ security-based swap activities – requested in FOCUS Report Part II, as amended, is circumscribed by what broker-dealer SBSs and MSBSs report currently in FOCUS Report Part II, Part II CSE, or Part IIB. The Commission believes that the economic effects associated with the requirement to file FOCUS Report Part II, as amended, will accordingly be circumscribed by the relevant registrants’ current reporting obligations.

⁹⁵¹ *See id.*

⁹⁵² *See id.*

⁹⁵³ *See* section II.B.1. of this release.

The Commission estimates that the amendments to Rule 17a-5 will result in an initial total cost of \$291,865 to broker-dealers.⁹⁵⁴ On an ongoing annual basis, the Commission estimates that the amendments to Rule 17a-5 will result in total costs of \$1,862,556 per year to broker-dealers.⁹⁵⁵

ii. Stand-Alone SBSBs, Stand-Alone MSBSPs, Bank SBSBs, and Bank MSBSPs (New Rule 18a-7)

New Rule 18a-7 as adopted will require stand-alone SBSBs and MSBSPs to file FOCUS Report Part II, as amended, with the Commission or its designee on a monthly basis. Given that stand-alone SBSBs and MSBSPs are not broker-dealers, these firms do not have experience filing the FOCUS Report, and thus reporting on FOCUS Report Part II, as amended, could represent a significant undertaking for them.

Relative to the information these firms generate now, FOCUS Report Part II, as amended, likely elicits greater detail about the registrants' security-based swap positions. In order to be able to provide the security-based swap information elicited by FOCUS Report Part II, as amended, registrants will need to have the requisite additional details regarding their security-based swap positions. While the Commission expects that stand-alone SBSBs and MSBSPs currently prepare financial statements that encompass their security-based swap activity, reporting on FOCUS Report Part II, as amended, may require these firms to establish new systems that facilitate their reporting of the required information. While these upgrades are likely to entail costs for firms, firms may also use these upgrades towards more efficiently tracking their trading and security-based swap exposures.

Moreover, since many of the entities that the Commission expects will register as stand-alone SBSBs and MSBSPs are currently not regulated, they are likely to be unaccustomed to completing and filing detailed

⁹⁵⁴ 1,085 hours x \$269 per hour national hourly rate for a compliance manager = \$291,865. See section IV.D.3. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for amendments to Rule 17a-5, as amended). The majority of costs that broker-dealers will incur as a result of the amendments to Rule 17a-5, as amended, are expected to result from the additional information required in FOCUS Report Part II, as amended, as compared to the parts of the FOCUS Report currently being filed by broker-dealers. Because broker-dealers (other than broker-dealers required to file Part IIA) will be required to file FOCUS Report Part II, as amended, on an ongoing basis, it is characterized as an annual cost, rather than an initial cost.

⁹⁵⁵ 6,924 hours x \$269 per hour national hourly rate for a compliance manager = \$ 1,862,556. See section IV.D.3. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for amendments to Rule 17a-5, as amended).

reports with financial regulators. Therefore the Commission anticipates that stand-alone SBSBs and MSBSBs will bear substantial costs in connection with completing and filing FOCUS Report Part II, as amended.

Rule 18a-7 as adopted further requires stand-alone SBSBs to generate and file their financial report and their compliance report or exemption report with the Commission on an annual basis. The compliance report contains several statements and descriptions related to the firms' compliance with the financial responsibility rules. The exemption report contains several statements regarding the firms' exemption from Rule 18a-4. These details will be entirely new for most stand-alone SBSB registrants. Finally, Rule 18a-7 requires stand-alone SBSBs and MSBSBs to file an annual audited report with the Commission. Stand-alone SBSBs and MSBSBs will be required to hire an independent public accountant to perform the audit and to prepare the annual audit report. The Commission is modifying Rule 18a-7 to permit stand-alone SBSBs and MSBSBs the option to engage an independent public accountant that is not registered with the PCAOB, and to permit the accountant to use GAAS in the United States or PCAOB Standards.⁹⁵⁶

The Commission believes that this will entail compliance-related costs for these entities. Specifically, the Commission believes that stand-alone SBSBs approved to use models may incur compliance costs related to, among other things, preparing and filing the additional reports that will be required under the new rules. The Commission estimates that all stand-alone MSBSBs will incur costs stemming from the requirement to engage an auditor. The Commission anticipates that stand-alone MSBSBs will incur fewer costs in complying with these requirements as compared to stand-alone SBSBs because stand-alone MSBSBs will not be required to file the compliance report or the exemption report. The Commission believes the additional reports that stand-alone SBSBs approved to use models will be required to file with the Commission will give rise to less substantial compliance costs relative to the other costs generated by the reporting requirements. This is the case because the additional reporting obligations for stand-alone SBSBs approved to use models are relatively few and are generally closely related to their use of internal models approved by the Commission to calculate market and

⁹⁵⁶ See section II.B.3.a. of this release (discussing the requirement to file annual reports and the qualifications of independent public accountants).

credit risk. Stand-alone SBSBs approved to use models will incur the majority of the costs associated with these internal models in designing and operating the models themselves rather than in filing the reports arising from these models.

While the Commission understands that stand-alone SBSBs and MSBSPs may not currently be registered as broker-dealers and thus may not currently be filing the FOCUS Report (and thus have no familiarity with it), many stand-alone SBSBs and MSBSPs may be affiliated with, or be part of, a larger financial firm that contains a broker-dealer, thus providing a source of experience with the FOCUS Report that is internal to the firm and reducing compliance-related costs. Moreover, the accounting and legal communities are familiar with the FOCUS Report so the Commission believes that this familiarity should mitigate the compliance costs for stand-alone SBSBs and MSBSPs insofar as they have access to external assistance that has experience with the FOCUS Report. At the same time, the Commission acknowledges that there may be stand-alone SBSBs and MSBSPs affiliated with, for example, FCMs, and such firms would conceivably benefit from rules based upon or similar to CFTC rules.

Furthermore, the information required to be reported by bank SBSBs and MSBSPs on the FOCUS Report Part IIC largely would be information that banks are already required to provide in call reports. Thus, the Commission does not believe that FOCUS Report Part IIC will require substantial additional effort to complete.⁹⁵⁷

⁹⁵⁷ Whenever possible, the Commission has adopted the same line item numbers as are used for the call report (but appended with the letter “b” in FOCUS Report Part IIC) to facilitate a bank SBSB’s or bank MSBSP’s use of data from the call report.

The Commission estimates that Rule 18a-7 will result in an initial industry cost of \$597,180.⁹⁵⁸ The Commission further estimates that Rule 18a-7 will result in an ongoing annual industry cost of \$3,169,083.50.⁹⁵⁹

d. Notification Requirements

The Commission believes that costs of the notification requirement will be incidental to the related underlying substantive obligation.

i. Broker-Dealer MSBSPs and Stand-Alone Broker-Dealers (Amendments to Rule 17a-11)

The Commission believes that most of the costs stemming from the notification requirements contained in amendments to Rule 17a-11 will arise from preparing and filing the notices. In the aggregate, the Commission estimates the amendments to Rule 17a-11 to result in an ongoing annual industry cost of \$28,245 to broker-dealer SBSs and MSBSPs.⁹⁶⁰

ii. Stand-Alone SBSs, Stand-Alone MSBSPs, Bank SBSs, and Bank MSBSPs (New Rule 18a-8)

The Commission estimates that the notification requirements contained in new Rule 18a-8 for non-broker-dealer SBSs and MSBSPs will result in an ongoing annual industry-wide costs of \$1,237.⁹⁶¹

⁹⁵⁸ 2,220 hours x \$269 per hour national hourly rate for a compliance manager = \$597,180. See section IV.D.3. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for amendments to Rule 17a-5, as amended, and Rule 18a-7, as adopted). The majority of the costs that SBSs and MSBSPs will incur as a result of Rule 18a-7 are expected to result from the requirements to elicit information in Form SBS and to conduct an annual audit. Because the additional information in the Form SBS and the annual audit will be required on an ongoing basis, the Commission is characterizing them as sources of ongoing costs.

⁹⁵⁹ (2,397 hours x \$63 per hour national hourly rate for a compliance clerk) + \$3,018,072.5 in external costs = \$3,169,083.50. See section IV.D.3. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden Rule 18a-7, as adopted).

⁹⁶⁰ (105 hours) x \$269 per hour national hourly rate for a compliance manager = \$28,245. See section IV.D.4. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for amendments to Rule 17a-11, as amended, and Rule 18a-8, as adopted).

⁹⁶¹ 4.6 hours x \$269 per hour national hourly rate for a compliance manager = \$1,237. See section IV.D.4. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for amendments to Rule 17a-11, as amended, and Rule 18a-8, as adopted).

e. Quarterly Securities Count Requirement (New Rule 18a-9)

The Commission believes that the costs and any larger economic effects associated with new Rule 18a-9 should be similar to the costs associated with existing Rule 17a-13 on which new Rule 18a-9 is modeled. These costs will primarily be related to the development and maintenance of internal procedures and controls and the investment in technology. The Commission estimates that Rule 18a-9 will impose an initial industry-wide cost of \$51,150⁹⁶² and an industry-wide ongoing annual cost of \$75,600.⁹⁶³

3. Economic Effects of the Approach to Recordkeeping, Reporting, Notification, and Securities Count Requirements

In addition to the costs and benefits of the specific rules and amendments discussed above, certain economic effects arise from the Commission's overall approach in adopting recordkeeping, reporting, notification, and securities count requirements. Generally, the new requirements being adopted in this document are based upon the existing comprehensive system of recordkeeping, reporting, notification, and securities count rules applicable to broker-dealers, as modified to capture and document the security-based swap activities of broker-dealers, SBSBs, and MSBSPs. As discussed in Section II. above, the current broker-dealer recordkeeping, reporting, notification, and securities count requirements served as the template for the new rules and rule amendments for several reasons. The financial markets in which entities expected to register as SBSBs and MSBSPs operate are similar to the financial markets in which broker-dealers currently operate in that the markets are driven in significant part by dealers that buy and sell on a regular basis and take principal risk.

⁹⁶² 150 hours x \$341 per hour national hourly rate for a senior operations manager = \$51,150. See section IV.D.5. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for Rule 18a-9). The \$341 per hour figure for a senior operations manager is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012*, as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

⁹⁶³ 600 hours x \$126 per hour national hourly rate for an operations specialist = \$75,600. See section IV.D.5. of this release (PRA estimate of the total initial and annual recordkeeping and reporting burden for Rule 18a-9). The \$126 per hour figure for an operations specialist is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012*, as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

The Commission believes that adopting a similar regulatory approach for similar markets is likely to mitigate the cost borne by market participants. Broker-dealers and third-party service providers that assist broker-dealers in meeting their recordkeeping, reporting, and notification requirements are familiar with Commission recordkeeping, reporting, and notification rules for broker-dealers. To the extent that these entities become subject to these final rules or provide services to entities that become subject to these final rules, consistency with the existing recordkeeping, reporting, and notification requirements for broker-dealers will likely reduce the costs associated with compliance with these rules. The Commission believes that these efficiencies could be realized even by firms that are not currently registered as broker-dealers given that some of the new registrants will likely be part of larger financial firms that have a broker-dealer affiliate, thus providing a source of in-house experience with the Commission's broker-dealer rules. However, the Commission acknowledges that these reductions in compliance costs may be much more limited for firms that are not currently broker-dealers and are not affiliated with broker-dealers.

In addition, Commission staff consulted with staff from fellow regulators regarding the new rules and rule amendments, as those regulators may have analogous regulations. The Commission believes the final rules may benefit security-based swap markets by applying recordkeeping and reporting requirements that are consistent with similar requirements in other jurisdictions. In considering whether there were other practicable regulatory alternatives, the Commission also examined existing rules of the prudential regulators. For example, the OCC has promulgated rules governing recordkeeping and confirmation requirements for securities transactions effected by national banks.⁹⁶⁴ Paragraph (a)(1) of the OCC rule governing the record that a national bank effecting securities transactions for customers must maintain (Rule 12.3) appears broadly consistent with paragraph (a)(6) of Rule 17a-3, as amended, as well as with paragraph (b)(7) of Rule 18a-5.⁹⁶⁵ Consistency with prudential regulators' requirements may mitigate compliance burdens for bank SBSBs and MSBSPs that become subject to the adopted rules.

⁹⁶⁴ See 12 CFR 12.3.

⁹⁶⁵ Compare 12 CFR 12.3(a), with paragraph (a)(6) of Rule 17a-3, as amended, and paragraph (b)(7) of Rule 18a-5, as adopted.

The Commission also believes the new rules and rule amendments herein are broadly consistent with the approach taken by the CFTC. The CFTC’s final rules were modeled on existing rules promulgated by both the CFTC and the Commission.⁹⁶⁶ As noted above,⁹⁶⁷ entities that are active participants in the security-based swap market also tend to be active participants in the CFTC-regulated swap market, and the Commission estimated that approximately 35 of the 50 expected SBSBs will be dually registered with the CFTC and therefore be subject to CFTC recordkeeping, reporting, and notification requirements.

The recordkeeping rules the Commission is adopting are similar to those of the CFTC in terms of their level of prescriptiveness. For example, paragraph (a)(1) of existing Rule 17a-3 sets forth the requirement that a broker-dealer make and keep current a trade blotter, while paragraphs (a)(1) and (b)(1) of Rule 18a-5 include parallel blotter requirements for stand-alone SBSBs and MSBSPs and bank-SBSBs and bank-MSBSPs respectively.⁹⁶⁸ In comparison, the CFTC’s rule 202 (“Daily Trading Records”), which corresponds to the Commission’s Rules 17a-3 and 18a-5, prescribes that swap dealers and major swap participants must make and keep trade execution records that are very similar to the records required to be made and kept by Rules 17a-3 and 18a-5.⁹⁶⁹ Because the Commission is adopting requirements that are similar to CFTC requirements, entities that are already registered with the CFTC may experience relatively lower costs to become compliant with the adopted rules.

Further, as the Commission has noted in other releases, regulatory consistency can also reduce the likelihood of regulatory arbitrage. The new requirements applicable to stand-alone SBSBs and MSBSPs seek to regulate these firms’ security-based swap activity in a manner consistent with the regulation of security-based swap activities conducted at broker-dealers and at banks, while reflecting the business model of such entities.⁹⁷⁰

⁹⁶⁶ See CFTC, *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules*, 77 FR at 20171 (stating swap dealer and major swap participant rules are modeled on existing rules as well as those of the Commission).

⁹⁶⁷ See section V.B.2.a. of this release.

⁹⁶⁸ See section II.A.2.a. of this release.

⁹⁶⁹ See 17 CFR 23.202(a)(2) (Rule 202).

⁹⁷⁰ In this regard, the Commission notes the new rules exclude a number of recordkeeping requirements for bank SBSBs and MSBSPs. As discussed above in section I of this release, Section 15F(f)(1)(B) of the Exchange Act requires such institutions to keep only those books and records of all activities related to the conduct of business as an SBSB or MSBSP.

As a result, the final rules mitigate the risk that bank SBSBs and MSBSBs restructure their activities in order to take advantage of differences in prudential regulators' recordkeeping and reporting requirements and those adopted by the Commission.

The Commission believes that applying consistent requirements across all entities that engage in security-based swap activity will facilitate competition between these entities on similar terms insofar as firms operating in different jurisdictions will incur similar compliance costs. The Commission is seeking to provide all security-based swap activity, irrespective of the entity within which such activity is conducted, a level regulatory playing field while being cognizant of the fact that firms with a more limited security-based swap business should also be subject to an appropriately circumscribed set of regulations.

In response to a commenter's concerns regarding harmonization with the CFTC's recordkeeping requirements as well as to promote harmonization with CFTC requirements,⁹⁷¹ the Commission is also adopting a limited alternative compliance mechanism that – subject to certain requirements⁹⁷² – allows registrants to employ a single recordkeeping system for swap and security-based swap transactions and positions and to follow a single set of recordkeeping requirements while helping to ensure that the requisite records are promptly available to the Commission staff in a format that readily permits examination. The limited alternative compliance mechanism could thereby ease compliance burdens – particularly initial burdens – for registrants that have already devoted substantial resources towards complying with the CFTC's recordkeeping requirements for swap transactions and positions and will not be required to incur afresh the costs of the recordkeeping system software needed to comply with the Commission's new recordkeeping requirements for security-based swap transactions and positions. The limited alternative compliance mechanism should also

⁹⁷¹ See Nomura Letter.

⁹⁷² See section II.A.1. of this release.

afford the relevant registrants greater flexibility in the manner in which they record security-based swap transactions and positions.⁹⁷³

Finally, the Commission is amending the full alternative compliance mechanism in existing Rule 18a-10 that permits certain SBSDs that are registered as swap dealers and that predominantly engage in a swaps business to elect to comply with the capital, margin, and segregation requirements of the CEA and the CFTC's rules in lieu of complying with the capital, margin, and segregation requirements in Rules 18a-1, 18a-3, and 18a-4. The amendments to Rule 18a-10 will permit firms that will operate under Rule 18a-10 to elect to comply with the recordkeeping and reporting requirements of the CEA and the CFTC's rules in lieu of complying with Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9. The Commission believes the availability of the full alternative compliance mechanism will promote harmonization with CFTC requirements and reduce compliance costs for eligible SBSDs and MSBSPs. The Commission estimates that in the absence of the full alternative compliance mechanism, the initial industry compliance costs could be as much as \$827,715 higher and the ongoing annual industry compliance could be as much as \$1,292,637 higher.⁹⁷⁴

4. Cross-Border Application and Substituted Compliance

As discussed above,⁹⁷⁵ the Commission treats the adopted recordkeeping and reporting requirements as entity-level requirements. Entity-level requirements apply to all the security-based swap transactions of the registered entity regardless of the U.S. person status of the entity or the U.S. person status of the entity's counterparty to any particular transactions. The Commission believes that the concentration of global security-based swap activity within a small group of large entities makes entity level regulation – thereby not exempting

⁹⁷³ See section II.A.2. of this release. As stated above, however, the Commission is making the conservative estimate that no firms will use the limited alternative compliance mechanism. However, the Commission believes that providing the limited alternative compliance mechanism could ease compliance burdens for some firms already registered with the CFTC.

⁹⁷⁴ This estimate is based on the Commission's estimate that 3 stand-alone SBSDs will take advantage of the full alternative compliance mechanism. See section IV.D.7 of this release. The increase in initial industry compliance costs in the absence of full alternative compliance for Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 are \$261,240, \$395,640, \$145,260, \$0.00, and \$25,575, respectively. The corresponding increases in ongoing compliance costs are \$89,550, \$79,088, \$1,114,549, \$0.00, and \$9,450, respectively. See section IV.D.1. through section IV.D.4. and section IV.D.6. of this release.

⁹⁷⁵ See section II.F.1. of this release.

certain transactions from the recordkeeping, reporting, notification, and securities count requirements being adopted in this document – critical to advancing the policy objectives of Title VII.

Classifying security-based swap recordkeeping and reporting requirements as entity-level requirements may facilitate and strengthen Commission oversight of registered SBSs and enhance compliance with the full range of obligations under Federal securities laws and Commission rules regardless of the location of counterparties or personnel. Title VII security-based swap recordkeeping and reporting requirements may enhance the Commission’s ability to evaluate foreign SBSs and MSBSs’ records for evidence of market manipulation or other abusive practices within the United States. Moreover, since the marginal cost of keeping daily trading records and confirmations is likely to be low for SBSs and MSBSs, the Commission does not believe that the savings associated with limited application of these requirements to a subset of an SBS’s or MSBS’s transactions is likely to be high.

In considering the scope of the entities that will be included within the ambit of the new recordkeeping, reporting, notification, and securities count requirements being adopted in this document, the Commission is aware that market participants may respond to entity-level requirements by restructuring their business or exiting markets to reduce the likelihood of incurring an obligation to register with the Commission. Compliance with the recordkeeping and reporting requirements will increase costs for SBSs and MSBSs, including those that are non-U.S. persons. To the extent that foreign SBSs and MSBSs have market power, they may pass the costs of these requirements through to U.S. persons in the form of higher transaction costs. Furthermore, to the extent that non-U.S. persons avoid transacting with U.S. persons to avoid registration requirements, U.S. persons may implicitly bear the costs of compliance through reduced access to liquidity provided by non-U.S. persons.⁹⁷⁶

Given that security-based swap markets are global and the Commission expects registered SBSs and MSBSs to transact across multiple jurisdictions, some registered SBSs may be subject to duplicative or

⁹⁷⁶ See *Application of “Security-Based Swap Dealer” and “Major Security-Based Swap Participant” Definitions to Cross-Border Security-Based Swap Activities*, 79 FR at 47343.

mutually conflicting recordkeeping and reporting requirements in multiple foreign jurisdictions. This may impede the entry of foreign SBSDs and MSBSPs into the U.S. security-based swap market, disrupt existing business relationships, and, more generally, reduce competition and market efficiency. As discussed above, the Commission is amending Rule 3a71-6 to provide non-U.S. SBSDs and non-U.S. MSBSPs with the potential to utilize substituted compliance with comparable foreign requirements to satisfy the recordkeeping and reporting requirements of Section 15F of the Exchange Act and Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 thereunder.⁹⁷⁷

Allowing for the possibility of substituted compliance is expected to help achieve the benefits of the recordkeeping and reporting requirements being adopted in this document in a manner that avoids the costs that foreign registrants would have to bear due to regulatory duplication or conflict. A substituted compliance determination could thus preserve the access of foreign registrants into U.S. security-based swap markets and hence promote market efficiency and enhance competition therein while also generally facilitating a well-functioning global security-based swap market. Further, as the availability of substituted compliance lowers the potential costs to non-U.S. SBSDs and non-U.S. MSBSPs of complying with the rules being adopted in this document, the costs of completing security-based swap transactions may be lower, relative to the case where substituted compliance is not available and counterparties, including non-dealer counterparties, may bear lower transactions costs as a result. At the same time, the process of making substituted compliance requests may cause foreign registrants to incur additional costs of applying for a substituted compliance determination. These substituted compliance requests will be made on a voluntary basis, and foreign registrants will only make such requests when the anticipated costs of relying on substituted compliance are lower than the costs of complying directly with the final rules being adopted in this document. Further, after a substituted compliance determination is made, foreign registrants will choose substituted compliance only if their expected private

⁹⁷⁷ See section II.F.2. of this release.

benefits from participating in U.S. security-based swap markets exceed expected private costs, including any conditions the Commission may attach to the substituted compliance determination.

The Commission also recognizes that these costs and the overall economic effects of allowing substituted compliance for the final recordkeeping and reporting rules will depend on, among other things: whether and to what extent substituted compliance requests will be granted for jurisdictions in which some of the most active foreign registrants are currently regulated and supervised; the costs of potential relocation, business restructuring, or direct compliance by foreign registrants that may be denied substituted compliance requests; the relevant information required to demonstrate consistency between the foreign regulatory requirements and the Commission's recordkeeping and reporting rules; the relevant information required to demonstrate the adequacy of the foreign regime's compliance and enforcement mechanisms; the fraction of foreign registrants in a given jurisdiction that may choose to make substituted compliance requests; and whether substituted compliance determinations for subsequent applications are more likely to be granted after an initial affirmative substituted compliance determination for the first applicant from a given jurisdiction. Nevertheless, the potential for the duplication of recordkeeping and reporting compliance costs on foreign registrants may be more significant in cases where the foreign jurisdictions' regulatory regimes impose less stringent recordkeeping and reporting requirements than the requirements being adopted in this document or when other prerequisites for substituted compliance have not been satisfied. The Commission thus recognizes that there will be limits to the availability of substituted compliance, including the possibility that substituted compliance may be permitted with regard to some requirements and not with regard to others, or that, in certain circumstances, substituted compliance may not be permitted with respect to any requirements of a particular jurisdiction.

D. Impact on Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act provides that whenever the Commission engages in rulemaking under the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action

will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.⁹⁷⁸ Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In the aggregate, the recordkeeping, reporting, and notification rules are an integral part of the financial responsibility rules governing security-based swaps which, in turn, are part of the regulatory regime for OTC derivatives markets established by Title VII of the Dodd Frank Act. As stated above, the Commission believes that the recordkeeping, reporting, notification, and securities count rules and rule amendments being adopted in this document address, among other things, the documentation, reporting, and evidence of compliance with the capital, margin, and segregation rules. Thus, the Commission believes that these rules, by their nature, will have a more limited economic impact as compared to the Commission's capital, margin, and segregation rules.⁹⁷⁹

Similarly, while the Commission expects that the adoption of these rules and rule amendments, and their attendant benefits and costs, will affect competition, efficiency, and capital formation, the Commission believes that such impact will be more limited than the impact from the capital, margin, and segregation rules. In most instances, the Commission believes the costs of the new rules and rule amendments will be implementation-related and the benefits will stem from enabling the Commission to evaluate whether SBSs and MSBSs are in compliance with the financial responsibility rules governing security-based swap activities. The Commission's belief that the costs of the rule and rule amendments will be implementation-related is supported by the results of a broker-dealer survey conducted prior to the finalization of the OTC derivatives rules.⁹⁸⁰

⁹⁷⁸ See 15 U.S.C. 78w(a)(2).

⁹⁷⁹ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43968-44040.

⁹⁸⁰ See Harvard Law School Forum on Corporate Governance and Financial Regulation, *Broker-Dealers Respond to Dodd-Frank and FINRA* (Oct. 8, 2011), available at <https://corpgov.law.harvard.edu/2011/10/08/broker-dealers-respond-to-dodd-frank-and-finra/>.

According to this survey even though the majority, i.e. 57.5% of surveyed broker-dealers, stated that they expected to be “highly impacted” by the regulation of OTC derivatives markets under Title VII of the Dodd Frank Act,⁹⁸¹ the specific areas that were anticipated as representing top operational challenges were all implementation-related. Thus, the majority, i.e. 61.9 % of surveyed broker-dealers, indicated that their top anticipated challenge from Title VII regulations for OTC derivatives markets was “documenting compliance with suitability requirements when making recommendations to counterparties” followed by 59.5%, who cited the “need for subject matter expertise to derivatives and the disclosure obligations set forth in the CFTC’s recently proposed rules.” In terms of the areas that the survey respondents anticipated would represent the most significant operational challenges emerging from the Dodd-Frank Act, 45.3% indicated “regulatory inquiries and exams” followed by 35.7% for “trade reporting” and 19% for “disclosures and reporting requirements.”

The rules are designed to provide greater regulatory transparency into the business activities of firms that engage in security-based swap activities and to assist the Commission and other regulators in reviewing and determining compliance with the capital, margin, and segregation requirements. As the Commission has discussed in its associated release,⁹⁸² the capital, margin, and segregation requirements have the potential to enhance efficiency and capital formation in financial markets through their impact on competition. In general, the Commission believes that the new rules and rule amendments will thus help ensure that firms that engage in security-based swap activities do so in a financially responsible manner. The Commission further believes that the new rules and rule amendments, by improving its ability to monitor the financial condition of the relevant registrants, could increase the willingness of market participants that value regulatory oversight of the security-based swap market to engage in security-based swap activities. Additional participation in the security-based swap market could lead to increased competition between suppliers of security-based swap liquidity and increased efficiency, through both lower transactions costs and reduced search costs. These, in turn, may have a

⁹⁸¹ The survey considered the following specific initiatives of the Dodd-Frank Act: (1) the uniform fiduciary standard; (2) the Volcker Rule regulating proprietary trading under Dodd-Frank Title VI and (iii) the regulation of the OTC derivatives markets under Title VII of the Dodd-Frank Act.

⁹⁸² See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 44033-40.

positive effect on capital formation, to the extent that they improve opportunities for risk sharing using security-based swaps.

The Commission is cognizant, however, that it must be sensitive to the costs and burdens imposed by its rules on both individual firms and financial markets as a whole. For example, overly restrictive or costly recordkeeping requirements could reduce the willingness of firms to engage in security-based swap trading. This could, in turn, increase transaction costs for market participants and dampen liquidity in the market. Even if the costs of overly restrictive recordkeeping, reporting, notification, and securities count requirements were shouldered only by those market participants that are subject to them, the regulations will impose additional costs on capital markets at large since the resources used to comply with the regulations will not be available for potentially more efficient uses, thereby distorting capital allocation and, in turn, adversely affecting capital formation. Similarly, the additional costs of the new recordkeeping, reporting, securities count, and notification requirements could represent barriers to entry for potential market participants; however, the Commission believes that these rules and rule amendments are unlikely to increase the barriers to entry in this market in a material way. Notwithstanding this belief, the Commission has taken steps, where appropriate, to reduce compliance costs for some SBSs and MSBSs by establishing the limited and full alternative compliance mechanisms.

As described in more detail above, broker-dealers historically have not participated in a significant way in security-based swap trading, in part, because the existing broker-dealer capital requirements make it relatively costly to conduct these activities in broker-dealers.⁹⁸³ Thus, from among the 3,893 stand-alone broker-dealers registered with the Commission as of December 31, 2017, the Commission estimates that approximately twenty-five (or only 0.62%) will be engaged in security-based swap activities while not being required to register as SBSs or MSBSs.⁹⁸⁴

⁹⁸³ See section IV.C. of this release.

⁹⁸⁴ See *id.*

To the extent that the new rules or rule amendments are burdensome or costly, they may induce market participants to scale back their activities or exposures to avoid incurring the obligation to register as SBSBs or MSBSBs. This reduction in scale could adversely impact competition between liquidity suppliers leading to lower liquidity, impeded price discovery, and higher transaction costs, all of which are characteristics of reduced levels of efficiency in the market. Moreover, it is possible that increased costs could lead certain market participants to cease engaging altogether in security-based swap trading or to restructure their activities in ways that allow them to avoid registration with the Commission and entity-level requirements under Title VII.

The Commission is particularly cognizant of the impacts of restructuring in financial markets that are global in scope. Competitive disparities in regulations across different jurisdictions coupled with SBSBs' flexibility to restructure their businesses and operations may result in market fragmentation.⁹⁸⁵ The outcome of such restructuring could be a large pool of security-based swap liquidity consisting of transactions that are carried out by unregistered non-U.S.-person dealers with non-U.S.-person counterparties using personnel outside of the United States and a smaller pool consisting of transactions involving U.S. persons or using personnel located in a U.S. branch or office. Such fragmentation could make it more difficult for U.S. persons to find liquidity in the United States, and those U.S. persons that might otherwise use security-based swaps to hedge financial and commercial risks may reduce their hedging activity and assume an inefficient amount of risk, or engage in precautionary savings by accumulating capital to mitigate the effects of market risks, which would inhibit capital formation. The Commission notes, however, that the type of restructuring necessary to avoid counting security-based swap dealing activity towards *de minimis* thresholds which will trigger

⁹⁸⁵ Analysis of TIW data shows that 79.5% of North American corporate single-name CDS transactions in 2014 involved either two ISDA-recognized dealers or an ISDA-recognized dealer and a non-U.S.-person non-dealer. The Commission believes that restructuring as a response to competitive disparities stemming from Title VII regulation is more likely to occur within this subset of the market because these dealers currently operate from locations throughout the world and enjoy a volume of business that is more likely to make such restructuring profitable.

requirements to register as an SBSB will likely be costly for non-U.S. persons,⁹⁸⁶ and these costs may reduce the likelihood that non-U.S. persons restructure in response to the requirements being adopted in this release. In particular, to the extent that the costs of restructuring are larger than the costs of complying with Commission recordkeeping, reporting, and notification rules, they may reduce the likelihood of market fragmentation and the associated impacts on competition, efficiency, and capital formation that might otherwise result from counterparties seeking to avoid complying with these rules.

In addition to the competitive effects of compliance burdens discussed above, the approach to substituted compliance may impact competition between U.S. and non-U.S. entities. Substituted compliance for recordkeeping and reporting requirements may reduce burdens for foreign SBSBs and MSBSPs and may promote competition if it reduces the likelihood that foreign SBSBs and MSBSPs exit the U.S. security-based swap market. Moreover, substituted compliance could improve efficiency by reducing the potential that a fragmented market develops, in which U.S. persons cannot easily access liquidity provided by foreign SBSBs and MSBSPs.

E. Alternatives to the Adopted Recordkeeping, Reporting, Notification, and Securities Count Rules

The Commission recognizes that there may be other appropriate approaches to establishing recordkeeping, reporting, and notification requirements. In the course of preparing and considering the new rules and rule amendments it is adopting in this document, Commission staff reviewed and analyzed analogous rule sets utilized by the Commission's fellow Federal regulators, with a view towards determining whether there may be other practicable alternatives.

One alternative would be for all SBSBs and MSBSPs to keep and report the same records and other financial reports. While technically possible and arguably simpler to implement and administer, the Commission does not believe such a requirement would be justified given the different capital, margin, and

⁹⁸⁶ See *Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception*, 81 FR at 8633.

segregation requirements that apply to each participant. For example, since a stand-alone MSBSP is not subject to a minimum net capital requirement under the capital rules applicable to SBSDs and MSBSPs (it is subject to a positive tangible net worth standard instead),⁹⁸⁷ it may be unduly burdensome to require stand-alone MSBSPs to calculate and report in FOCUS Report Part II, as amended, the amount of net capital they hold. Hence, while the Commission considered this approach, the Commission believes that such an approach would be confusing and unduly burdensome for firms required to complete and file FOCUS Report Part II, as amended, and would introduce significant compliance challenges beyond those imposed by the new rules and rule amendments.

Another alternative to the new rules and rule amendments the Commission is adopting would be rules that are less prescriptive. Under such rules, detailed record production and retention requirements could be replaced by more general references to the types of information the firm needs to document and retain for examination purposes. This approach could promote a consistent view and management of recordkeeping and reporting obligations within a large financial firm that has numerous subsidiaries. This approach would also likely have the advantage of being less costly, as the firm would be more able to bring recordkeeping practices at its subsidiaries into conformity with existing recordkeeping practices at the parent. While this approach has its benefits, the financial markets and transactions in which SBSDs and MSBSPs are expected to operate and engage in, respectively, are similar to the financial markets and transactions in which broker-dealers operate, and the Commission believes these similarities argue for a consistent regulatory approach.⁹⁸⁸ In addition, as discussed above, the objectives of these broker-dealer requirements are similar to the objectives underlying the new rules and rule amendments regarding security-based swaps.⁹⁸⁹

The Commission considered modifying the electronic storage requirements in Rule 17a-4 to remove the requirement that the electronic storage system preserve records exclusively in a non-rewriteable and non-erasable format similar to the modification made to Rule 18a-6 in response to comments that it received. The

⁹⁸⁷ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43906-08.

⁹⁸⁸ See *Capital, Margin, and Segregation Adopting Release*, 84 FR at 43881 (stating a similar rationale for basing the proposed capital, margin, and segregation requirements for SBSDs on the broker-dealer capital, margin, and segregation requirements).

⁹⁸⁹ See section I of this release.

Commission concluded that any such modification to Rule 17a-4 would affect a large number of broker-dealers that are not likely to register either as SBSBs or MSBSBs and may raise issues that are distinct from those raised by stand-alone or bank SBSBs and MSBSBs. Accordingly, the Commission believes that any change to these requirements should be addressed in a separate rulemaking.⁹⁹⁰

The Commission has also considered alternatives to the financial reporting rules being adopted. For example, with respect to bank SBSBs and MSBSBs, one alternative would be to permit these firms to use the existing financial reports made with their respective prudential regulators. This approach would allow the firms to avoid creating and filing an additional financial report with the Commission, and would likely result in fewer compliance-related costs. The Commission is aware of the burdens and costs associated with preparing an additional regulatory submission such as FOCUS Report Part IIC, but Rule 18a-7(a) is designed to lower burdens that bank SBSBs and MSBSBs may face to meet reporting requirements by aligning certain Commission reporting requirements with requirements these entities already face because they are subject to prudential regulators' reporting requirements. While FOCUS Report Part IIC seeks certain specific transaction and position data regarding bank SBSBs' and bank MSBSBs' security-based swap activities, the other required financial data in FOCUS Report Part IIC for bank SBSBs and MSBSBs are likely readily available because these come directly from the filings these firms are already required to make with their respective prudential regulators.⁹⁹¹

The Commission has also considered alternative financial reporting arrangements for stand-alone SBSBs or stand-alone MSBSBs. For example, the Commission is aware that the CFTC proposed that stand-alone swap dealers and stand-alone major swap participants be required to submit monthly unaudited financial statements within 17 business days of the end of the month, as well as GAAP financial statements within 60 days of the end of the fiscal year.⁹⁹² The Commission believes that the information elicited by FOCUS Report

⁹⁹⁰ See section II.A.3.a. of this release.

⁹⁹¹ See section II.B.2.b.ii. of this release.

⁹⁹² See *Capital Requirements of Swap Dealers and Major Swap Participants*, 81 FR 91252, 91276 (Dec. 16, 2016) (discussion of proposed CFTC Regulation 23.105).

Part II, as amended, should assist the Commission and the firms' DEAs to conduct effective examinations of broker-dealer SBSDs and MSBSPs. The broker-dealer SBSD and broker-dealer MSBSP reporting requirements should promote transparency of the financial and operational condition of these entities to both the Commission and the public.

The Commission has also considered alternatives to the notification and securities count rules.⁹⁹³ An alternative to the notification rule would be to not have such a rule, or to have fewer events give rise to the requirement for a notification. Similarly, with respect to the quarterly securities count rule, the Commission believes the alternative would be to specify a less frequent count or to omit altogether the requirement for securities count.

The Commission adopted the notification and securities count rules because it believes that the rules are an appropriate component of its oversight of the financial responsibility of firms engaged in the security-based swap business. The broker-dealer recordkeeping, reporting, notification, and securities count requirements are part of the broker-dealer financial responsibility rules.⁹⁹⁴ The financial responsibility rules are designed to work together to establish a comprehensive regulatory program designed to promote the prudent operation of broker-dealers and the safeguarding of customer securities and funds held by broker-dealers. In this regard, the notification and securities count rules (in conjunction with the recordkeeping and reporting rules) are designed to promote compliance with the capital, margin, and segregation requirements for broker-dealers. The recordkeeping, reporting, notification, and securities count requirements applicable to SBSDs and MSBSPs, along with the capital, margin, and segregation requirements for these registrants, are designed to establish a comprehensive financial responsibility program for SBSDs and MSBSPs. Like the broker-dealer rules, the recordkeeping, reporting, notification, and securities count requirements applicable to SBSDs and MSBSPs are designed to promote compliance with the capital, margin, and segregation requirements applicable to SBSDs and MSBSPs. Omitting such rules would create regulatory disparities between broker-dealers, banks, stand-

⁹⁹³ See section II.D.1. of this release (summarizing rationale underlying Rule 17a-13).

⁹⁹⁴ See 17 CFR 240.3a40-1.

alone SBSBs, and stand-alone MSBs. For these reasons, the Commission believes that alternative approaches would not be as effective in helping to ensure compliance with the capital, margin, and segregation requirements applicable to SBSBs and MSBs.

VI. OTHER MATTERS

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act,⁹⁹⁵ the Office of Information and Regulatory Affairs has designated these rules as “[not a major rule],” as defined by 5 U.S.C. 804(2).

VII. REGULATORY FLEXIBILITY ACT CERTIFICATION

The Regulatory Flexibility Act (“RFA”)⁹⁹⁶ requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Pursuant to Section 605(b) of the RFA,⁹⁹⁷ the Commission certified in the Proposing Release and the Cross-Border Proposing Release that the proposed amendments to Rules 17a-3, 17a-4, 17a-5, and 17a-11 and new Rules 3a71-6 and 18a-5 through 18a-9 would not have a significant economic impact on any “small entity”⁹⁹⁸ for purposes of the RFA.⁹⁹⁹

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) when used with reference to an “issuer” or a “person,” other than an investment company, an “issuer” or “person” that, on the last day of its most recent fiscal year, had total assets of \$5 million or less,¹⁰⁰⁰ or (2) a broker-dealer

⁹⁹⁵ 5 U.S.C. 801 *et seq.*

⁹⁹⁶ *See* 5 U.S.C. 601 *et seq.*

⁹⁹⁷ *See* 5 U.S.C. 605(b).

⁹⁹⁸ Although Section 601(b) of the RFA defines the term “*small entity*,” the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term “small entity” for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in 17 CFR 240.0-10 (“Rule 0-10”). *See Statement of Management on Internal Accounting Control*, Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982).

⁹⁹⁹ *See Recordkeeping and Reporting Proposing Release; Capital Rule for Certain Security-Based Swap Dealers*, 79 FR at 25296-25297; *Cross-Border Proposing Release*, 78 FR at 31204-31205.

¹⁰⁰⁰ *See* 17 CFR 240.0-10(a).

with total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to paragraph (d) of Rule 17a-5, or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.¹⁰⁰¹

Based on available information about the security-based swap market, the market, while broad in scope, is largely dominated by entities such as those that will be covered by the SBSB and MSBSP definitions. Based on feedback from industry participants about the security-based swap markets, the Commission continues to believe that (1) the types of entities that would engage in more than a *de minimis* amount of dealing activity involving security-based swaps—which generally would be large financial institutions—would not be “small entities” for purposes of the RFA;¹⁰⁰² and (2) the types of entities that may have security-based swap positions above the level required to register as “major security-based swap participants” would not be “small entities” for purposes of the RFA. Thus, the Commission believes that it is unlikely that the requirements applicable to SBSBs and MSBSPs that are being established under the amendments to Rules 3a71-6, 17a-3, 17a-4, 17a-5, 17a-11, and 17a-12 and new Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9, will have a significant economic impact on any small entity.

The Commission estimates that as of December 31, 2018 there are approximately 996 broker-dealers that are “small” for the purposes Rule 0-10. While the amendments to Rules 17a-3, 17a-4, and 17a-5 relating to making and keeping records that include details about security-based swaps and swaps and reporting information about security-based swaps and swaps will apply to all broker-dealers with such positions, it is unlikely that these amendments will have any impact on small broker-dealers, since most, if not all, of these

¹⁰⁰¹ See 17 CFR 240.0-10(c).

¹⁰⁰² The amendments are discussed in detail in section II of this release. The Commission discusses the economic impact, including the compliance costs and burdens, of the amendments in sections IV and V of this release.

firms generally do not hold these types of positions. In addition, the technical amendments to Rules 17a-3, 17a-4, 17a-5, 17a-11, and 17a-12 will apply to all broker-dealers, including broker-dealers that are small. However, these amendments will have no impact on broker-dealers, including small broker-dealers, because they will not establish new substantive requirements.

For the foregoing reasons, the Commission certifies that the amendments to Rules 3a71-6, 17a-3, 17a-4, 17a-5, 17a-11, and 17a-12 and new Rules 18a-5 through 18a-9, will not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

VIII. STATUTORY BASIS

The Commission is revising Rules 30-3, 17a-3, 17a-4, 17a-5, 17a-11, 17a-12, and 3a71-6 under the Exchange Act (17 CFR 200.30-3, 17 CFR 240.17a-3, 17 CFR 240.17a-4, 17 CFR 240.17a-5, 17 CFR 240.17a-11, 17 CFR 240.17a-12, and 17 CFR 240.3a71-6), Part II of Form X-17A-5 and the instructions thereto (17 CFR 249.617), and Part III of Form X-17A-5 (17 CFR 249.617), and adding new Rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 under the Exchange Act (17 CFR 240.18a-5, 17 CFR 240.18a-6, 17 CFR 240.18a-7, 17 CFR 240.18a-8, and 17 CFR 240.18a-9), and Part IIC of Form X-17A-5 and the instructions thereto (17 CFR 249.617) pursuant to the authority conferred by the Exchange Act, including Sections 15F, 17, and 23(a).

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Civil rights, Classified information, Conflicts of interest, Environmental impact statements, Equal employment opportunity, Federal buildings and facilities, Freedom of information, Government securities, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Sunshine Act.

17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Recordkeeping and reporting requirements, Securities.

Text of Rules and Rule Amendments

For the reasons set out in the preamble, the Commission is amending title 17, chapter II, of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77o, 77s, 77z-3, 77sss, 78d, 78d-1, 78d-2, 78o-4, 78w, 78ll(d), 78mm, 80a-37, 80b-11, 7202, and 7211 *et seq.*, unless otherwise noted.

* * * * *

Section 200.30-3 is also issued under 15 U.S.C. 78b, 78d, 78f, 78k-1, 78q, 78s, and 78eee.

* * * * *

2. Section 200.30-3 is amended by revising paragraphs (a)(5) and (30) and (a)(65)(i) to read as follows:

§ 200.30-3 Delegation of authority to Director of Division of Trading and Markets.

* * * * *

(a) * * *

(5) Pursuant to § 240.17a-5(m)(3) of this chapter (Rule 17a-5(m)(3)), to consider applications by brokers and dealers for exemptions from, and extension of time within which to file, reports required by § 240.17a-5 of this chapter (Rule 17a-5) and to grant, and to authorize the issuance of orders denying, such applications, provided such applicant is advised of his right to have such denial reviewed by the Commission.

* * * * *

(30) Pursuant to section 17(a) of the Act, 15 U.S.C. 78q, to approve amendments to the plans which are consistent with the reporting structure of §§ 240.17a-5(a)(2) and 240.17a-10(b) of this chapter (Rules 17a-

5(a)(2) and 17a-10(b)) filed by self-regulatory organizations pursuant to §§ 240.17a-5(a)(3) and 240.17a-10(b) of this chapter (Rules 17a-5(a)(3) and 17a-10(b)).

* * * * *

(65) * * *

(i) To authorize the issuance of orders requiring over-the-counter (OTC) derivatives dealers to file, pursuant to § 240.17a-12(a)(1)(ii) of this chapter, monthly, or at least at such times as shall be specified, Part II of Form X-17A-5 (§ 249.617 of this chapter) and such other financial and operational information as shall be specified.

* * * * *

PART 240 — GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The general authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

4. Amend § 240.3a71-6 by adding paragraph (d)(6) to read as follows:

§ 240.3a71–6 Substituted compliance for security-based swap dealers and major security-based swap participants.

* * * * *

(d) * * *

(6) *Recordkeeping and reporting.* The recordkeeping and reporting requirements of Section 15F of the Act (15 U.S.C. 78o-10) and §§ 240.18a-5 through 240.18a-9; provided, however, that prior to making such a

substituted compliance determination the Commission intends to consider (in addition to any conditions imposed), whether the foreign financial regulatory system's required records and reports, the timeframes for recording or reporting information, the accounting standards governing the records and reports, and the required format of the records and reports are comparable to applicable provisions arising under the Act and its rules and regulations and would permit the Commission to examine and inspect regulated firms' compliance with the applicable securities laws.

5. Amend § 240.17a-3 by:
 - a. Adding introductory text;
 - b. Revising paragraphs (a) introductory text, (a)(1) and (3), (a)(4)(vi) and (vii), (a)(5) through (11), (a)(12)(i) introductory text, and (a)(12)(i)(A) and (E) through (H);
 - c. Removing the undesignated paragraph following paragraph (a)(12)(i);
 - d. Adding paragraph (a)(12)(i)(I);
 - e. Revising paragraph (a)(12)(ii);
 - f. In paragraphs (a)(16)(ii)(A) and (B), removing the phrase "shall mean" and adding in its place "means";
 - g. In paragraphs (a)(17)(i)(A) and (a)(17)(i)(B)(*I*), removing the word "shall" and adding in its place "must" wherever it appears;
 - h. In paragraphs (a)(17)(i)(C) and (D), removing the word "shall" and adding in its place "will" wherever it appears;
 - i. In paragraphs (a)(18)(i) and (a)(19)(i), removing the word "shall" and adding in its place "must" wherever it appears;
 - j. Adding paragraphs (a)(25) through (30);
 - k. Revising paragraphs (b) through (g); and
 - l. Removing paragraph (h).

The additions and revisions read as follows:

§ 240.17a-3 Records to be made by certain exchange members, brokers and dealers.

This section applies to the following types of entities: a member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange; a broker or dealer who transacts a business in securities through the medium of a member of a national securities exchange; a broker or dealer, including an *OTC derivatives dealer* as that term is defined in § 240.3b-12, registered pursuant to section 15 of the Act (15 U.S.C. 78o); a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10) that is also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; and a major security-based swap participant registered pursuant to section 15F of the Act that is also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act. Section 240.18a-5 (rather than this section) applies to the following types of entities: a security-based swap dealer registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act.

(a) Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to section 15 of the Act (15 U.S.C. 78o) must make and keep current the following books and records relating to its business:

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities (including security-based swaps), all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records must show the account for which each such purchase or sale was effected, the name and amount of securities, the unit and aggregate purchase or sale price, if any (including the financial terms for security-based swaps), the trade date, and the name or other designation of the person from whom such securities were purchased or received or to whom sold or delivered. For security-based swaps, such records must also show, for each transaction, the type

of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination date, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code.

* * * * *

(3) Ledger accounts (or other records) itemizing separately as to each cash, margin, or security-based swap account of every customer and of such member, broker or dealer and partners thereof, all purchases, sales, receipts and deliveries of securities (including security-based swaps) and commodities for such account, and all other debits and credits to such account; and, in addition, for a security-based swap, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination date, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code.

(4) * * *

(vi) All long and all short securities record differences arising from the examination, count, verification, and comparison pursuant to §§ 240.17a-5, 240.17a-12, 240.17a-13, and 240.18a-7, as applicable (by date of examination, count, verification, and comparison showing for each security the number of long or short count differences); and

(vii) Repurchase and reverse repurchase agreements.

(5) A securities record or ledger reflecting separately for each:

(i) Security, other than a security-based swap, as of the clearance dates all "long" or "short" positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such member, broker or dealer for its account or for the account of its customers or partners, or others, and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

(ii) Security-based swap, the reference security, index, or obligor, the unique transaction identifier, the counterparty's unique identification code, whether it is a "bought" or "sold" position in the security-based swap, whether the security-based swap is cleared or not cleared, and if cleared, identification of the clearing agency where the security-based swap is cleared.

(6)(i) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security, except for the purchase or sale of a security-based swap, whether executed or unexecuted.

(A) The memorandum must show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time the order was received, the time of entry, the price at which executed, the identity of each associated person, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer, or, if a customer entered the order on an electronic system, a notation of that entry; and, to the extent feasible, the time of execution or cancellation. The memorandum need not show the identity of any person, other than the associated person responsible for the account, who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the member, broker or dealer must produce upon request by a representative of a securities regulatory authority a separate record which identifies each other person. An order entered pursuant to the exercise of discretionary authority by the member, broker or dealer, or associated person thereof, must be so designated. The term *instruction* must include instructions between partners and employees of a member, broker or dealer. The term *time of entry* means the time when the member, broker or dealer transmits the order or instruction for execution.

(B) The memorandum need not be made as to a purchase, sale or redemption of a security on a subscription way basis directly from or to the issuer, if the member, broker or dealer maintains a copy of the customer's or non-customer's subscription agreement regarding a purchase, or a copy of any other document required by the issuer regarding a sale or redemption.

(ii) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security-based swap, whether executed or unexecuted. The memorandum must show the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer, or, if a customer entered the order on an electronic system, a notation of that entry; and, to the extent feasible, the time of cancellation, if applicable. The memorandum also must include the type of the security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code. An order entered pursuant to the exercise of discretionary authority must be so designated.

(7)(i) A memorandum of each purchase or sale of a security, other than for the purchase or sale of a security-based swap, for the account of the member, broker or dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where the purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt; the terms and conditions of the order and of any modification thereof; the account for which it was entered; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer, or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum need not show the identity of any person other than the associated person responsible for the account who may have entered the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person. In the circumstance in the preceding sentence, the member, broker or dealer must produce upon request by a representative of a securities regulatory authority a separate record that identifies each other person. An order with a customer other than a member, broker or dealer entered

pursuant to the exercise of discretionary authority by the member, broker or dealer, or associated person thereof, must be so designated.

(ii) A memorandum of each purchase or sale of a security-based swap for the account of the member, broker or dealer showing the price; and, in addition, where the purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt; the terms and conditions of the order and of any modification thereof; the account for which it was entered; the identity of any other person who entered or accepted the order on behalf of the customer, or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum must also include the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination date, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code. An order entered pursuant to the exercise of discretionary authority must be so designated.

(8)(i) With respect to a security other than a security-based swap, copies of confirmations of all purchases and sales of securities, including all repurchase and reverse repurchase agreements, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer.

(ii) With respect to a security-based swap, copies of the security-based swap trade acknowledgment and verification made in compliance with § 240.15Fi-2.

(9) A record with respect to each cash, margin, and security-based swap account with such member, broker or dealer indicating, as applicable:

(i) The name and address of the beneficial owner of such account;

(ii) Except with respect to exempt employee benefit plan securities as defined in § 240.14a-1(d), but only to the extent such securities are held by employee benefit plans established by the issuer of the securities, whether or not the beneficial owner of securities registered in the name of such members, brokers or dealers, or

a registered clearing agency or its nominee objects to disclosure of his or her identity, address, and securities positions to issuers;

(iii) In the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account; and

(iv) For each security-based swap account, a record of the unique identification code of such counterparty, the name and address of such counterparty, and a record of the authorization of each person the counterparty has granted authority to transact business in the security-based swap account.

(10) A record of all puts, calls, spreads, straddles, and other options in which such member, broker or dealer has any direct or indirect interest or which such member, broker or dealer, has granted or guaranteed, containing, at least, an identification of the security, and the number of units involved. An OTC derivatives dealer must also keep a record of all eligible OTC derivative instruments as defined in § 240.3b-13 in which the OTC derivatives dealer has any direct or indirect interest or which it has written or guaranteed, containing, at a minimum, an identification of the security or other instrument, the number of units involved, and the identity of the counterparty.

(11) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date, pursuant to § 240.15c3-1 or § 240.18a-1, as applicable. The computation need not be made by any member, broker or dealer unconditionally exempt from § 240.15c3-1 pursuant to § 240.15c3-1(b)(1) or (3). Such trial balances and computations must be prepared currently at least once a month.

(12)(i) A questionnaire or application for employment executed by each *associated person* as that term is defined in paragraph (g)(4) of this section of the member, broker or dealer, which questionnaire or application must be approved in writing by an authorized representative of the member, broker or dealer and must contain at least the following information with respect to the associated person:

(A) The associated person's name, address, social security number, and the starting date of the associated person's employment or other association with the member, broker or dealer;

* * * * *

(E) A record of any denial, suspension, expulsion, or revocation of membership or registration of any member, broker or dealer with which the associated person was associated in any capacity when such action was taken;

(F) A record of any permanent or temporary injunction entered against the associated person, or any member, broker, dealer, security-based swap dealer or major security-based swap participant with which the associated person was associated in any capacity at the time such injunction was entered;

(G) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker or dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting, or extortion, and the disposition of the foregoing; and

(H) A record of any other name or names by which the associated person has been known or which the associated person has used.

(I) Provided, however, that if such associated person has been registered as a registered representative of such member, broker or dealer with, or the associated person's employment has been approved by a registered national securities association or a registered national securities exchange, then retention of a full, correct, and complete copy of any and all applications for such registration or approval will be deemed to satisfy the requirements of this paragraph (a)(12)(i).

(ii) A record listing every associated person of the member, broker or dealer which shows, for each associated person, every office of the member, broker or dealer, where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security for the member, broker or dealer and the Central Registration Depository

number, if any, and every internal identification number or code assigned to that person by the member, broker or dealer.

* * * * *

(25) A record of the daily calculation of the current exposure and, if applicable, the initial margin amount for each account of a counterparty required under § 240.18a-3(c).

(26) A record of compliance with possession or control requirements under § 240.15c3-3(p)(2).

(27) A record of the reserve computation required under § 240.15c3-3(p)(3).

(28) A record of each security-based swap transaction that is not verified under § 240.15Fi-2 within five business days of execution that includes, at a minimum, the unique transaction identifier and the counterparty's unique identification code.

(29) A record documenting that the broker or dealer has complied with the business conduct standards as required under § 240.15Fh-6.

(30) A record documenting that the broker or dealer has complied with the business conduct standards as required under §§ 240.15Fh-1 through 240.15Fh-5 and § 240.15Fk-1.

* * * * *

(b) A broker or dealer may comply with the recordkeeping requirements of the Commodity Exchange Act and chapter I of this title applicable to swap dealers and major swap participants in lieu of complying with paragraphs (a)(1), (3), and (5) of this section solely with respect to required information regarding security-based swap transactions and positions if:

(1) The broker or dealer is registered as a security-based swap dealer or major security-based swap participant pursuant to section 15F of the Act (15 U.S.C. 78o-10);

(2) The broker or dealer is registered as a swap dealer or major swap participant pursuant to section 4s of the Commodity Exchange Act and chapter I of this title;

(3) The broker or dealer is subject to 17 CFR 23.201, 23.202, 23.402, and 23.501 with respect to its swap-related books and records;

(4) The broker or dealer preserves all of the data elements necessary to create the records required by paragraphs (a)(1), (3), and (5) of this section as they pertain to security-based swap and swap transactions and positions;

(5) The broker or dealer upon request furnishes promptly to representatives of the Commission the records required by paragraphs (a)(1), (3), and (5) of this section as well as the records required by 17 CFR 23.201, 23.202, 23.402, and 23.501 as they pertain to security-based swap and swap transactions and positions in the format applicable to that category of record as set forth in this section; and

(6) The broker or dealer provides notice of its intent to utilize this paragraph (b) by notifying in writing the Commission, both at the principal office of the Commission in Washington, DC, and at the regional office of the Commission for the region in which the registrant has its principal place of business, as well as by notifying in writing the registrant's designated examining authority.

(c) A member of a national securities exchange, or a broker or dealer registered pursuant to section 15 of the Act (15 U.S.C. 78o), that introduces accounts on a fully-disclosed basis, is not required to make or keep such records of transactions cleared for such member, broker or dealer as are made and kept by a clearing broker or dealer pursuant to the requirements of this section and § 240.17a-4. Nothing in this paragraph (c) will be deemed to relieve such member, broker or dealer from the responsibility that such books and records be accurately maintained and preserved as specified in this section and § 240.17a-4.

(d) For purposes of transactions in municipal securities by municipal securities brokers and municipal securities dealers, compliance with Rule G-8 of the Municipal Securities Rulemaking Board or any successor rule will be deemed to be in compliance with this section.

(e) The provisions of this section will not apply to security futures product transactions and positions in a *futures account* (as that term is defined in § 240.15c3-3(a)(15)); provided, that the Commodity Futures Trading Commission's recordkeeping rules apply to those transactions and positions.

(f) Every member, broker or dealer must make and keep current, as to each office, the books and records described in paragraphs (a)(1), (6), (7), (12), and (17), (a)(18)(i), and (a)(19) through (22) of this section.

(g) When used in this section:

(1) The term *office* means any location where one or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.

(2) The term *principal* means any individual registered with a registered national securities association as a principal or branch manager of a member, broker or dealer or any other person who has been delegated supervisory responsibility over associated persons by the member, broker or dealer.

(3) The term *securities regulatory authority* means the Commission, any self-regulatory organization, or any securities commission (or any agency or office performing like functions) of the States.

(4) The term *associated person* means a “person associated with a broker or dealer” or “person associated with a security-based swap dealer or major security-based swap participant” as defined in sections 3(a)(18) and (70) of the Act (15 U.S.C. 78c(a)(18) and (70)) respectively, but does not include persons whose functions are solely clerical or ministerial.

* * * * *

6. Amend § 240.17a-4 by:

a. Adding introductory text;

b. Revising paragraphs (a), (b) introductory text, (b)(1), (3) through (5), and (7), (b)(8) introductory text, (b)(8)(i), (v) through (viii), and (xii) through (xv);

c. Adding paragraphs (b)(8)(xvi) and (xvii);

d. Revising paragraph (b)(9);

e. In paragraph (b)(11), removing the word “shall” and adding in its place the word “must”;

f. Revising paragraphs (b)(12) and (13);

- g. Adding paragraphs (b)(14) through (16);
- h. Revising paragraphs (c), (d), (e) introductory text, and (e)(1) through (4) and (6);
- i. In the last sentence of paragraph (e)(8), removing the word “shall” and adding in its place the word “must”;
- j. In paragraph (f) introductory text, removing the word “paragraph,” and adding in its place the word “section”;
- k. In paragraphs (f)(2) introductory text and (f)(3) introductory text, removing the word “shall” and adding in its place the word “must”;
- l. In paragraph (f)(3)(iv)(B), removing the phrase “each index.” and adding in its place the phrase “the index.”;
- m. In paragraph (f)(3)(vi), removing the phrase “the self-regulatory organizations” and adding in its place the phrase “any self-regulatory organization”;
- n. Revising paragraphs (f)(3)(vii) and (g);
- o. In paragraph (h), adding the phrase “or any successor rule” after the word “Board”;
- p. Revising paragraph (i);
- q. In paragraph (j), removing the word “shall” and adding in its place the word “must”;
- r. In paragraph (k)(1), removing the word “shall” and adding in its place the word “must” wherever it appears;
- s. In paragraph (l), removing “§ 240.17a-3(g)” and adding in its place “§ 240.17a-3(e)”;
- t. Revising paragraphs (m)(1) through (4); and
- u. Adding paragraph (m)(5).

The additions and revisions read as follows:

§ 240.17a-4 Records to be preserved by certain exchange members, brokers and dealers.

This section applies to the following types of entities: a member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange; a broker

or dealer who transacts a business in securities through the medium of a member of a national securities exchange; a broker or dealer, including an *OTC derivatives dealer* as that term is defined in § 240.3b-12, registered pursuant to section 15 of the Act (15 U.S.C. 78o); a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10) that is also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; and a major security-based swap participant registered pursuant to section 15F of the Act that is also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act. Section 240.18a-6 (rather than this section) applies to the following types of entities: a security-based swap dealer registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act.

(a) Every member, broker or dealer subject to § 240.17a-3 must preserve for a period of not less than 6 years, the first two years in an easily accessible place, all records required to be made pursuant to § 240.17a-3(a)(1) through (3), (5), and (21) and (22), and analogous records created pursuant to § 240.17a-3(d).

(b) Every member, broker or dealer subject to § 240.17a-3 must preserve for a period of not less than three years, the first two years in an easily accessible place:

(1) All records required to be made pursuant to § 240.17a-3(a)(4), (6) through (11), (16), (18) through (20), and (25) through (30), and analogous records created pursuant to § 240.17a-3(e).

* * * * *

(3) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the member, broker or dealer's business as such.

(4) Originals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public. As used in this

paragraph (b)(4), the term *communications* includes sales scripts and recordings of telephone calls required to be maintained pursuant to section 15F(g)(1) of the Act (15 U.S.C. 78o-10(g)(1)).

(5) All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations, and internal audit working papers, relating to the member, broker or dealer's business as such.

* * * * *

(7) All written agreements (or copies thereof) entered into by such member, broker or dealer relating to its business as such, including agreements with respect to any account. Written agreements with respect to a security-based swap customer or non-customer, including governing documents or any document establishing the terms and conditions of the customer's or non-customer's security-based swaps must be maintained with the customer's or non-customer's account records.

(8) Records which contain the following information in support of amounts included in the report prepared as of the fiscal year end on Part II or IIA of Form X-17A-5 (§ 249.617 of this chapter), as applicable, and in the annual financial statements filed with the Commission required by § 240.17a-5(d), § 240.17a-12(b), or § 240.18a-7(c), as applicable:

(i) Money balance and position, long or short, including description, quantity, price, and valuation of each security including contractual commitments in customers' accounts, in cash and fully secured accounts, partly secured accounts, unsecured accounts, and in securities accounts payable to customers;

* * * * *

(v) Description of futures commodity contracts or swaps, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in customers' and non-customers' accounts;

(vi) Description of futures commodity contracts or swaps, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in trading and investment accounts;

(vii) Description, money balance, quantity, price, and valuation of each spot commodity, and swap position or commitments in customers' and non-customers' accounts;

(viii) Description, money balance, quantity, price, and valuation of each spot commodity, and swap position or commitments in trading and investment accounts;

* * * * *

(xii) Description, settlement date, contract amount, quantity, market price, and valuation for each aged failed to deliver requiring a charge in the Computation of Net Capital pursuant to § 240.15c3-1 or § 240.18a-1, as applicable;

(xiii) Detail relating to information for possession or control requirements under § 240.15c3-3 or § 240.18a-4, as applicable and reported in Part II or IIA of Form X-17A-5 (§ 249.617 of this chapter), as applicable;

(xiv) Detail relating to information for security-based swap possession or control requirements under § 240.15c3-3 or § 240.18a-4, as applicable, and reported in Part II or IIA of Form X-17A-5 (§ 249.617 of this chapter);

(xv) Detail of all items, not otherwise substantiated, which are charged or credited in the Computation of Net Capital pursuant to § 240.15c3-1 or § 240.18a-1, as applicable, such as cash margin deficiencies, deductions related to securities values and undue concentration, aged securities differences, and insurance claims receivable;

(xvi) Detail relating to the calculation of the risk margin amount pursuant to § 240.15c3-1(c)(17) or § 240.18a-1(c)(6), as applicable; and

(xvii) Other schedules which are specifically prescribed by the Commission as necessary to support information reported as required by §§ 240.17a-5, 240.17a-12, and 240.18a-7, as applicable.

(9) The records required to be made pursuant to § 240.15c3-3(d)(5) and (o) or § 240.18a-4, as applicable.

* * * * *

(12) The records required to be made pursuant to § 240.15c3-1e(c)(4)(vi) or § 240.18a-1(e)(2)(iii)(F)(2), as applicable.

(13) The written policies and procedures the broker-dealer establishes, documents, maintains, and enforces to assess creditworthiness for the purpose of § 240.15c3-1(c)(2)(vi)(E), (c)(2)(vi)(F)(I) and (2), and (c)(2)(vi)(H) or § 240.18a-1(c)(1)(vi)(2), as applicable.

(14) A copy of information required to be reported under §§ 242.901 through 242.909 of this chapter (Regulation SBSR).

(15) Copies of documents, communications, disclosures, and notices related to business conduct standards as required under §§ 240.15Fh-1 through 240.15Fh-6 and 240.15Fk-1.

(16) Copies of documents used to make a reasonable determination with respect to special entities, including information relating to the financial status, the tax status, the investment or financing objectives of the special entity as required under section 15F(h)(4)(C) and (5)(A) of the Act (15 U.S.C. 78o-10(h)(4)(C) and (5)(A)).

(c) Every member, broker or dealer subject to § 240.17a-3 must preserve for a period of not less than six years after the closing of any customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of the account.

(d) Every member, broker or dealer subject to § 240.17a-3 must preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books, and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms BD (§ 249.501 of this chapter), all Forms BDW (§ 249.501a of this chapter), all Forms SBSE-BD (§ 249.1600b of this chapter), all Forms SBSE-C (§ 249.1600c of this chapter), all Forms SBSE-W (§ 249.1601 of this chapter), all amendments to these forms, and all licenses or other documentation showing the registration of the member, broker or dealer with any securities regulatory authority or the Commodity Futures Trading Commission.

(e) Every member, broker or dealer subject to § 240.17a-3 must maintain and preserve in an easily accessible place:

(1) All records required under § 240.17a-3(a)(12) until at least three years after the associated person's employment and any other connection with the member, broker or dealer has terminated.

(2) All records required under § 240.17a-3(a)(13) until at least three years after the termination of employment or association of those persons required by § 240.17f-2 to be fingerprinted.

(3) All records required pursuant to § 240.17a-3(a)(15) during the life of the enterprise.

(4) All records required pursuant to § 240.17a-3(a)(14) for three years.

* * * * *

(6) Each report which a securities regulatory authority or the Commodity Futures Trading Commission has requested or required the member, broker or dealer to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority, Commodity Futures Trading Commission, or prudential regulator examination report until three years after the date of the report.

* * * * *

(f) * * *

(vii) For every member, broker or dealer exclusively using electronic storage media for some or all of its record preservation under this section, at least one third party (the undersigned), who has access to and the ability to download information from the member's, broker's or dealer's electronic storage media to any acceptable medium under this section, must file with the designated examining authority for the member, broker or dealer the following undertakings with respect to such records:

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission ("Commission"), its designees or representatives, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer, upon reasonable request, such information as deemed necessary by the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer to download information kept on the member's, broker's or dealer's electronic storage media to any medium acceptable under § 240.17a-4. Furthermore, the undersigned

hereby undertakes to take reasonable steps to provide access to information contained on the member's, broker's or dealer's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained and preserved by the member, broker or dealer pursuant to §§ 240.17a-3 and 240.17a-4 in a format acceptable to the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer. Such arrangements will provide specifically that in the event of a failure on the part of a member, broker or dealer to download the record into a readable format and after reasonable notice to the broker or dealer, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, as the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer may request.

(g) If a person who has been subject to § 240.17a-3 ceases to transact a business in securities directly with others than members of a national securities exchange, or ceases to transact a business in securities through the medium of a member of a national securities exchange, or ceases to be registered pursuant to section 15 of the Act (15 U.S.C. 78o) such person must, for the remainder of the periods of time specified in this section, continue to preserve the records which it theretofore preserved pursuant to this section.

* * * * *

(i)(1) If the records required to be maintained and preserved pursuant to the provisions of §§ 240.17a-3 and 240.17a-4 are prepared or maintained by an outside service bureau, depository, bank which does not operate pursuant to § 240.17a-3(b)(2), or other recordkeeping service on behalf of the member, broker or dealer required to maintain and preserve such records, such outside entity must file with the Commission a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the member, broker or dealer required to maintain and preserve such records and will be surrendered promptly on request of the member, broker or dealer and including the following provision:

With respect to any books and records maintained or preserved on behalf of [BD], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete and current hard copy of any or all or any part of such books and records.

(2) Agreement with an outside entity will not relieve such member, broker or dealer from the responsibility to prepare and maintain records as specified in this section or in § 240.17a-3.

* * * * *

(m) * * *

(1) The term *office* has the meaning set forth in § 240.17a-3(g)(1).

(2) The term *principal* has the meaning set forth in § 240.17a-3(g)(2).

(3) The term *securities regulatory authority* has the meaning set forth in § 240.17a-3(g)(3).

(4) The term *associated person* has the meaning set forth in § 240.17a-3(g)(4).

(5) The term *business as such* includes security-based swap activity.

* * * * *

7. Section 240.17a-5 is amended by:

a. Adding introductory text;

b. Revising paragraph (a) heading and removing paragraph (a)(1);

c. Redesignating paragraphs (a)(2) through (7) as paragraphs (a)(1) through (6);

d. Revising newly redesignated paragraphs (a)(1)(ii) through (iv) and (a)(2) through (5);

e. In newly redesignated paragraph (a)(6), removing the word “shall” and adding in its place the word “will” wherever it appears;

f. Revising paragraph (b)(1);

g. In paragraphs (b)(3) through (5), removing the word “shall” and adding in its place the word “will” wherever it appears;

- h. In paragraphs (c)(1) and (2), removing the word “shall” and adding in its place the word “must” wherever it appears;
- i. Revising paragraph (c)(3);
- j. In paragraph (c)(4)(iii), removing the word “shall” and adding in its place the word “must”;
- k. Designate the undesignated paragraph following paragraph (c)(4)(iii) as paragraph (c)(4)(iv);
- l. In paragraph (c)(5)(iii)(C), removing the word “Home” and adding in its place the word “home” wherever it appears;
- m. In paragraph (d)(1)(i) introductory text, removing “(d)(1)(iv)” and adding “(iv)” in its place and adding “(15 U.S.C. 78o)” after the phrase “section 15 of the Act”;
- n. Revising paragraphs (d)(1)(i)(B), (d)(2)(i) through (iii), (d)(3)(i)(A)(4) and (5), (d)(3)(i)(B) and (C), (d)(3)(iii), (d)(6), (e)(1)(ii), and (e)(2) through (4);
- o. In the fifth sentence of paragraph (f)(3)(v)(B), adding the word “the” before the phrase “independent public accountant does not agree”;
- p. Revising the note to paragraph (h);
- q. In paragraph (k) introductory text, removing the word “shall” and adding in its place the word “must” wherever it appears and removing the phrase “Market Regulation” and adding in its place the phrase “Trading and Markets”;
- r. In paragraph (l), removing “(1)” and “(2),” removing the phrase “Securities Exchange Act of 1934” and adding in its place the word “Act”, and removing the word “shall” and adding in its place the word “must”;
- s. In paragraph (m)(1), removing the word “shall” and adding in its place the word “must”;
- t. In paragraph (m)(2), removing “(48 Stat. 882; 15 U.S.C. 78c)” and “(78 Stat. 565; 15 U.S.C. 78c)” and adding in their place “(15 U.S.C. 78c)”;
- u. In paragraph (m)(4), removing the word “shall” and adding in its place the word “will”;
- v. In paragraph (n)(2), removing the word “shall” and adding in its place the word “must”; and

w. Revising paragraph (o).

The additions and revisions read as follows:

§ 240.17a-5 Reports to be made by certain brokers and dealers.

This section applies to the following types of entities: except as provided in this introductory text, a broker or dealer, including an *OTC derivatives dealer* as that term is defined in § 240.3b-12 registered pursuant to section 15 of the Act (15 U.S.C. 78o); a broker or dealer, other than an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10); and a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a major-security-based swap participant registered pursuant to section 15F of the Act. Section 240.18a-7 (rather than this section) applies to the following types of entities: a security-based swap dealer registered pursuant to section 15F of the Act that is not also a broker or dealer, other than an OTC derivatives dealer, registered pursuant to section 15 of the Act; a security-based swap dealer registered pursuant to section 15F of the Act that is also an OTC derivatives dealer; and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act.

(a) *Monthly and quarterly reports*--(1) * * *

(ii) Every broker or dealer subject to this paragraph (a) who clears transactions or carries customer accounts and every broker or dealer that is registered as a security-based swap dealer or major security-based swap participant under section 15F of the Act (15 U.S.C. 78o-10) must file with the Commission an executed Part II of Form X-17A-5 (§ 249.617 of this chapter) within 17 business days after the end of the calendar quarter and within 17 business days after the end of the fiscal year of the broker or dealer where that date is not the end of a calendar quarter. Certain of such brokers or dealers must file with the Commission an executed Part IIA in lieu thereof if the nature of their business is limited as described in the instructions to Part II of Form X-17A-5 (§ 249.617 of this chapter).

(iii) Every broker or dealer that neither clears transactions nor carries customer accounts and that is not registered as a security-based swap dealer or major security-based swap participant under section 15F of the Act (15 U.S.C. 78o-10) must file with the Commission an executed Part IIA of Form X-17A-5 (§ 249.617 of this chapter) within 17 business days after the end of each calendar quarter and within 17 business days after the end of the fiscal year of the broker or dealer where that date is not the end of a calendar quarter.

(iv) Upon receiving written notice from the Commission or the examining authority designated pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) (“designated examining authority”), a broker or dealer who receives such notice must file with the Commission on a monthly basis, or at such times as will be specified, an executed Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), and such other financial or operational information as will be required by the Commission or the designated examining authority.

(2) The reports provided for in this paragraph (a) that must be filed with the Commission will be considered filed when received at the Commission’s principal office in Washington, DC, and the regional office of the Commission for the region in which the broker or dealer has its principal place of business. All reports filed pursuant to this paragraph (a) will be deemed to be confidential.

(3) The provisions of paragraph (a)(1) of this section will not apply to a member of a national securities exchange or a registered national securities association if said exchange or association maintains records containing the information required by Part I, Part II, or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), as to such member, and transmits to the Commission a copy of the applicable parts of Form X-17A-5 (§ 249.617 of this chapter) as to such member, pursuant to a plan, the procedures and provisions of which have been submitted to and declared effective by the Commission. Any such plan filed by a national securities exchange or a registered national securities association may provide that when a member is also a member of one or more national securities exchanges, or of one or more national securities exchanges and a registered national securities association, the information required to be submitted with respect to any such member may be submitted by only one specified national securities exchange or registered national securities association. For the purposes of this section, a plan filed with the Commission by a national securities exchange or a

registered national securities association will not become effective unless the Commission, having due regard for the fulfillment of the Commission's duties and responsibilities under the provisions of the Act, declares the plan to be effective. Further, the Commission, in declaring any such plan effective, may impose such terms and conditions relating to the provisions of the plan and the period of its effectiveness as may be deemed necessary or appropriate in the public interest, for the protection of investors, or to carry out the Commission's duties and responsibilities under the Act.

(4) Every broker or dealer subject to this paragraph (a) must file Form Custody (§ 249.639 of this chapter) with its designated examining authority within 17 business days after the end of each calendar quarter and within 17 business days after the end of the fiscal year of the broker or dealer where that date is not the end of a calendar quarter. The designated examining authority must maintain the information obtained through the filing of Form Custody and must promptly transmit that information to the Commission at such time as it transmits the applicable part of Form X-17A-5 (§ 249.617 of this chapter) as required in paragraph (a)(2) of this section.

(5) Broker-dealers that have been authorized by the Commission to compute net capital pursuant to § 240.15c3-1e must file the following additional reports with the Commission:

(i) For each product for which the broker or dealer calculates a deduction for market risk other than in accordance with § 240.15c3-1e(b)(1) or (3), the product category and the amount of the deduction for market risk within 17 business days after the end of the month;

(ii) A graph reflecting, for each business line, the daily intra-month value at risk within 17 business days after the end of the month;

(iii) The aggregate value at risk for the broker or dealer within 17 business days after the end of the month;

(iv) For each product for which the broker or dealer uses scenario analysis, the product category and the deduction for market risk within 17 business days after the end of the month;

(v) Credit risk information on derivatives exposures within 17 business days after the end of the month, including:

(A) Overall current exposure;

(B) Current exposure (including commitments) listed by counterparty for the 15 largest exposures;

(C) The ten largest commitments listed by counterparty;

(D) The broker's or dealer's maximum potential exposure listed by counterparty for the 15 largest exposures;

(E) The broker's or dealer's aggregate maximum potential exposure;

(F) A summary report reflecting the broker's or dealer's current and maximum potential exposures by credit rating category; and

(G) A summary report reflecting the broker's or dealer's current exposure for each of the top ten countries to which the broker or dealer is exposed (by residence of the main operating group of the counterparty);

(vi) Regular risk reports supplied to the broker's or dealer's senior management in the format described in the application, within 17 business days after the end of the month;

(vii) [Reserved]

(viii) A report identifying the number of business days for which the actual daily net trading loss exceeded the corresponding daily VaR within 17 business days after the end of each calendar quarter; and

(ix) The results of backtesting of all internal models used to compute allowable capital, including VaR and credit risk models, indicating the number of backtesting exceptions within 17 business days after the end of the calendar quarter.

* * * * *

(b) * * *

(1) If a broker or dealer holding any membership interest in a national securities exchange or registered national securities association ceases to be a member in good standing of such exchange or association, such

broker or dealer must, within two business days after such event, file with the Commission Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter) as determined by the standards set forth in paragraphs (a)(1)(ii) through (iv) of this section as of the date of such event. The report must be filed at the Commission's principal office in Washington, DC, and with the regional office of the Commission for the region in which the broker or dealer has its principal place of business; *provided, however*, that such report need not be made or filed if the Commission, upon written request or upon its own motion, exempts such broker or dealer, either unconditionally or on specified terms and conditions, from such requirement; *provided, further*, that the Commission may, upon request of the broker or dealer, grant extensions of time for filing the report specified herein for good cause shown.

* * * * *

(c) * * *

(3) *Unaudited statements to be furnished.* Unaudited statements dated 6 months after the date of the audited statements required to be furnished by paragraphs (c)(1) and (2) of this section must be furnished within 65 days after the date of the unaudited statements. The unaudited statements may be furnished 70 days after that time limit has expired if the broker or dealer sends them with the next mailing of the broker's or dealer's quarterly customer statements of account. In that case, the broker or dealer must include a statement in that mailing of the amount of the broker's or dealer's net capital and its required net capital in accordance with § 240.15c3-1, as of a fiscal month end that is within the 75-day period immediately preceding the date the statements are sent to customers. The unaudited statements must contain the information specified in paragraphs (c)(2)(i) and (ii) of this section.

* * * * *

(d) * * *

(1)(i) * * *

(B)(1) If the broker or dealer did not claim it was exempt from § 240.15c3-3 throughout the most recent fiscal year or the broker or dealer is subject to § 240.15c3-3(p), a compliance report as described in paragraph

(d)(3) of this section executed by the person who makes the oath or affirmation under paragraph (e)(2) of this section; or

(2) If the broker or dealer did claim it was exempt from § 240.15c3-3 throughout the most recent fiscal year and the broker or dealer is not subject to § 240.15c3-3(p), an exemption report as described in paragraph (d)(4) of this section executed by the person who makes the oath or affirmation under paragraph (e)(2) of this section;

* * * * *

(2) * * *

(i) A Statement of Financial Condition, a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and a Statement of Changes in Liabilities Subordinated to Claims of General Creditors. The statements must be prepared in accordance with U.S. generally accepted accounting principles and must be in a format that is consistent with the statements contained in Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), as applicable. If the Statement of Financial Condition filed in accordance with instructions to Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), as applicable, is not consolidated, a summary of financial data, including the assets, liabilities, and net worth or stockholders' equity, for subsidiaries not consolidated in the applicable Part II or Part IIA as filed by the broker or dealer must be included in the notes to the financial statements reported on by the independent public accountant.

(ii) Supporting schedules that include, from Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), a Computation of Net Capital under § 240.15c3-1, a Computation for Determination of Customer Reserve Requirements under § 240.15c3-3a (Exhibit A of § 240.15c3-3), a Computation for Determination of PAB Requirements under Exhibit A of § 240.15c3-3, a Computation for Determination of Security-Based Swap Customer Reserve Requirements under § 240.15c3-3b (Exhibit B of § 240.15c3-3), Information Relating to the Possession or Control Requirements for Customers under § 240.15c3-3, and Information Relating to the Possession or Control Requirements for Security-Based Swap Customers under § 240.15c3-3, as applicable.

(iii) If any of the Computation of Net Capital under § 240.15c3-1, the Computation for Determination of Customer Reserve Requirements Under Exhibit A of § 240.15c3-3, or the Computation for Determination of Security-Based Swap Customer Reserve Requirements under Exhibit B of § 240.15c3-3, as applicable, in the financial report is materially different from the corresponding computation in the most recent Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), as applicable, filed by the broker or dealer pursuant to paragraph (a) of this section, a reconciliation, including appropriate explanations, between the computation in the financial report and the computation in the most recent Part II or Part IIA of Form X-17A-5, as applicable, filed by the broker or dealer. If no material differences exist, a statement so indicating must be included in the financial report.

(3) * * *

(i) * * *

(A) * * *

(4) The broker or dealer was in compliance with §§ 240.15c3-1, 240.15c3-3(e) and, if applicable, 240.15c3-3(p)(3) as of the end of the most recent fiscal year; and

(5) The information the broker or dealer used to state whether it was in compliance with §§ 240.15c3-1, 240.15c3-3(e) and, if applicable, 240.15c3-3(p)(3) was derived from the books and records of the broker or dealer.

(B) If applicable, a description of each identified material weakness in the Internal Control Over Compliance of the broker or dealer during the most recent fiscal year.

(C) If applicable, a description of an instance of non-compliance with §§ 240.15c3-1, 240.15c3-3(e), or, if applicable, 240.15c3-3(p)(3) as of the end of the most recent fiscal year.

* * * * *

(iii) The broker or dealer is not permitted to conclude that its Internal Control Over Compliance was effective during the most recent fiscal year if there were one or more material weaknesses in its Internal Control Over Compliance during the most recent fiscal year. The broker or dealer is not permitted to conclude that its

Internal Control Over Compliance was effective as of the end of the most recent fiscal year if there were one or more material weaknesses in its internal control as of the end of the most recent fiscal year. A *material weakness* is a deficiency, or a combination of deficiencies, in Internal Control Over Compliance such that there is a reasonable possibility that non-compliance with § 240.15c3-1, § 240.15c3-3(e), or § 240.15c3-3(p)(3) will not be prevented or detected on a timely basis or that non-compliance to a material extent with § 240.15c3-3, except for paragraph (e), § 240.15c3-3(p), except for paragraph (p)(3), § 240.17a-13, or any Account Statement Rule will not be prevented or detected on a timely basis. A deficiency in Internal Control Over Compliance exists when the design or operation of a control does not allow the management or employees of the broker or dealer, in the normal course of performing their assigned functions, to prevent or detect on a timely basis non-compliance with § 240.15c3-1, § 240.15c3-3, or § 240.17a-13, or any Account Statement Rule.

* * * * *

(6) *Filing of annual reports.* The annual reports must be filed with the Commission at the regional office of the Commission for the region in which the broker or dealer has its principal place of business and to the Commission's principal office in Washington, DC, or the annual reports may be filed with the Commission electronically in accordance with directions provided on the Commission's website. The annual reports must also be filed at the principal office of the designated examining authority for the broker or dealer and with the Securities Investor Protection Corporation ("SIPC") if the broker or dealer is a member of SIPC. Copies of the reports must be provided to all self-regulatory organizations of which the broker or dealer is a member, unless the self-regulatory organization by rule waives the requirement in this paragraph (d)(6).

* * * * *

(e) * * *

(1) * * *

(ii) A broker or dealer that files an annual report under paragraph (d) of this section that is not covered by a report prepared by an independent public accountant must include in the oath or affirmation required by paragraph (e)(2) of this section a statement of the facts and circumstances relied upon as a basis for exemption

from the requirement that the annual report filed under paragraph (d) of this section be covered by reports prepared by an independent public accountant.

(2) The broker or dealer must attach to the financial report an oath or affirmation that, to the best knowledge and belief of the person making the oath or affirmation:

(i) The financial report is true and correct; and

(ii) Neither the broker or dealer, nor any partner, officer, director, or equivalent person, as the case may be, has any proprietary interest in any account classified solely as that of a customer. The oath or affirmation must be made before a person duly authorized to administer such oaths or affirmations. If the broker or dealer is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer; or if a limited liability company or limited liability partnership, by the chief executive officer, chief financial officer, manager, managing member, or those members vested with management authority for the limited liability company or limited liability partnership.

(3) The annual reports filed under paragraph (d) of this section are not confidential, except that, if the Statement of Financial Condition in a format that is consistent with Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter) is bound separately from the balance of the annual reports filed under paragraph (d) of this section, and each page of the balance of the annual reports is stamped “confidential,” then the balance of the annual reports will be deemed confidential to the extent permitted by law. However, the annual reports, including the confidential portions, will be available for official use by any official or employee of the U. S. or any State, by national securities exchanges and registered national securities associations of which the broker or dealer filing such a report is a member, by the Public Company Accounting Oversight Board, and by any other person if the Commission authorizes disclosure of the annual reports to that person as being in the public interest. Nothing contained in this paragraph (e)(3) may be construed to be in derogation of the rules of any registered national securities association or national securities exchange that give to customers of a broker or dealer the right, upon request to the broker or dealer, to obtain information relative to its financial condition.

(4) The broker or dealer must file with SIPC a report on the SIPC annual general assessment reconciliation or exclusion from membership forms that contains such information and is in such format as determined by SIPC by rule and approved by the Commission.

* * * * *

(h) * * *

Note 1 to paragraph (h): The attention of the broker or dealer and the independent public accountant is called to the fact that under § 240.17a-11(a)(1), among other things, a broker or dealer whose net capital declines below the minimum required pursuant to § 240.15c3-1 must give notice of such deficiency that same day in accordance with § 240.17a-11(h) and the notice must specify the broker or dealer's net capital requirement and its current amount of net capital. The attention of the broker or dealer and accountant also is called to the fact that under § 240.15c3-3(i), if a broker or dealer fails to make a reserve bank account or special reserve account deposit, as required by § 240.15c3-3, the broker or dealer must immediately notify the Commission and the regulatory authority for the broker or dealer, which examines such broker or dealer as to financial responsibility and must promptly thereafter confirm such notification in writing.

* * * * *

(o) *Filing requirements.* For purposes of filing requirements as described in this section, filing will be deemed to have been accomplished upon receipt at the Commission's principal office in Washington, DC, with duplicate originals simultaneously filed at the locations prescribed in the particular paragraph of this section which is applicable.

* * * * *

8. Section 240.17a-11 is amended by:
 - a. Adding introductory text;
 - b. Removing paragraph (a);
 - c. Redesignating paragraphs (b) through (i) as paragraphs (a) through (d) and (g) through (j);
 - d. Revising newly redesignated paragraphs (a), (b) introductory text, (c), and (d);

- e. Adding new reserved paragraph (e) and paragraph (f); and
- f. Revising newly redesignated paragraphs (g) through (j).

The revisions and additions read as follows:

§ 240.17a-11 Notification provisions for brokers and dealers.

This section applies to the following types of entities: except as provided in this introductory text, a broker or dealer, including an *OTC derivatives dealer* as that term is defined in § 240.3b-12, registered pursuant to section 15 of the Act (15 U.S.C. 78o); a broker or dealer, other than an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10); and a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a major-security-based swap participant registered pursuant to section 15F of the Act. Section 240.18a-8 (rather than this section) applies to the following types of entities: a security-based swap dealer registered pursuant to section 15F of the Act that is not also a broker or dealer, other than an OTC derivatives dealer, registered pursuant to section 15 of the Act; a security-based swap dealer registered pursuant to section 15F of the Act that is also an OTC derivatives dealer; and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act.

(a)(1) Every broker or dealer whose net capital declines below the minimum amount required pursuant to § 240.15c3-1, or is insolvent as that term is defined in § 240.15c3-1(c)(16), must give notice of such deficiency that same day in accordance with paragraph (h) of this section. The notice must specify the broker or dealer's net capital requirement and its current amount of net capital. If a broker or dealer is informed by its designated examining authority or the Commission that it is, or has been, in violation of § 240.15c3-1 and the broker or dealer has not given notice of the capital deficiency under this section, the broker or dealer, even if it does not agree that it is, or has been, in violation of § 240.15c3-1, must give notice of the claimed deficiency, which notice may specify the broker's or dealer's reasons for its disagreement.

(2) In addition to the requirements of paragraph (b)(1) of this section, an OTC derivatives dealer or broker or dealer permitted to compute net capital pursuant to the alternative method of § 240.15c3-1e must also provide notice if its tentative net capital falls below the minimum amount required pursuant to § 240.15c3-1. The notice must specify the tentative net capital requirements, and current amount of net capital and tentative net capital, of the OTC derivatives dealer or the broker or dealer permitted to compute net capital pursuant to the alternative method of § 240.15c3-1e.

(b) Every broker or dealer must send notice promptly (but within 24 hours) after the occurrence of the events specified in paragraphs (b)(1) through (5) of this section in accordance with paragraph (h) of this section:

* * * * *

(c) Every broker or dealer that fails to make and keep current the books and records required by § 240.17a-3, must give notice of this fact that same day in accordance with paragraph (h) of this section, specifying the books and records which have not been made or which are not current. The broker or dealer must also transmit a report in accordance with paragraph (h) of this section within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(d) Whenever any broker or dealer discovers, or is notified by an independent public accountant under § 240.17a-12(i)(2), of the existence of any material inadequacy as defined in § 240.17a-12(h)(2), or whenever any broker or dealer discovers, or is notified by an independent public accountant under § 240.17a-5(h), of the existence of any material weakness as defined in § 240.17a-5(d)(3)(iii), the broker or dealer must:

(1) Give notice, in accordance with paragraph (h) of this section, of the material inadequacy or material weakness within 24 hours of the discovery or notification of the material inadequacy or material weakness; and

(2) Transmit a report in accordance with paragraph (h) of this section, within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(e) [Reserved]

(f) If a broker-dealer fails to make in its special reserve account for the exclusive benefit of security-based swap customers a deposit, as required by § 240.15c3-3(p), the broker-dealer must give immediate notice in writing in accordance with paragraph (h) of this section.

(g) Every national securities exchange or national securities association that learns that a broker or dealer has failed to send notice or transmit a report as required by this section, even after being advised by the securities exchange or the national securities association to send notice or transmit a report, must immediately give notice of such failure in accordance with paragraph (h) of this section.

(h) Every notice or report required to be given or transmitted by this section must be given or transmitted to the principal office of the Commission in Washington DC and the regional office of the Commission for the region in which the broker or dealer has its principal place of business, or to an email address provided on the Commission's website, and to the designated examining authority of which such broker or dealer is a member, and to the Commodity Futures Trading Commission (CFTC) if the broker or dealer is registered as a futures commission merchant with the CFTC. The report required by paragraph (c) or (d)(2) of this section may be transmitted by overnight delivery.

(i) Other notice provisions relating to the Commission's financial responsibility or reporting rules are contained in §§ 240.15c3-1, 240.15c3-1d, 240.15c3-3, 240.17a-5, and 240.17a-12.

(j) The provisions of this section will not apply to a broker or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78o(b)(11)(A)) that is not a member of either a national securities exchange pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o-3(a)).

§240.17a-12 [Amended]

9. Section 240.17a-12 is amended by removing "Part IIB" and adding in its place "Part II" each time it appears.

10. Section 240.18a-1 is amended by adding paragraphs (d)(9)(iii)(A) and (B) to read as follows:

§ 240.18a-1 Net capital requirements for security-based swap dealers for which there is not a prudential regulator.

* * * * *

(d) * * *

(9) * * *

(iii) * * *

(A) The security-based swap dealer fails to meet the reporting requirements set forth in § 240.18a-7;

(B) Any event specified in § 240.18a-8 occurs;

* * * * *

11. Section 240.18a-5 is added to read as follows:

§ 240.18a-5 Records to be made by certain security-based swap dealers and major security-based swap participants.

This section applies to the following types of entities: a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10) that is not also a broker or dealer, including an *OTC derivatives dealer* as that term is defined in § 240.3b-12, registered pursuant to section 15 of the Act (15 U.S.C. 78o); and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act. Section 240.17a-3 (rather than § this section) applies to the following types of entities: a member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange; a broker or dealer who transacts a business in securities through the medium of a member of a national securities exchange; a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; a security-based swap dealer registered pursuant to section 15F of the Act that is also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; and a major security-based swap participant registered pursuant to section 15F of the Act that is also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act.

(a) This paragraph (a) applies only to security-based swap dealers and major security-based swap participants registered under section 15F of the Act for which there is no prudential regulator. Each security-based swap dealer and major security-based swap participant subject to this paragraph (a) must make and keep current the following books and records:

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities (including security-based swaps), all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records must show the account for which each such purchase or sale was effected, the name and amount of securities, the unit and aggregate purchase or sale price, if any (including the financial terms for security-based swaps), the trade date, and the name or other designation of the person from whom such securities were purchased or received or to whom sold or delivered. For security-based swaps, such records must also show, for each transaction, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination date, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code.

(2) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each account for every customer or non-customer of such security-based swap dealer or major security-based swap participant, all purchases and sales, receipts and deliveries of securities (including security-based swaps) and commodities for such account and all other debits and credits to such account; and in addition, for a security-based swap, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination date, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code.

(4) A securities record or ledger reflecting separately for each:

(i) Security, other than a security-based swap, as of the clearance dates all “long” or “short” positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such security-based swap dealer or major security-based swap participant for its account or for the account of its customers and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and, in all cases the name or designation of the account in which each position is carried.

(ii) Security-based swap, the reference security, index, or obligor, the unique transaction identifier, the counterparty’s unique identification code, whether it is a “bought” or “sold” position in the security-based swap, whether the security-based swap is cleared or not cleared, and if cleared, identification of the clearing agency where the security-based swap is cleared.

(5) A memorandum of each purchase or sale of a security-based swap for the account of the security-based swap dealer or major security-based swap participant showing the price. The memorandum must also include the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination date, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty’s unique identification code. An order entered pursuant to the exercise of discretionary authority must be so designated.

(6) With respect to a security other than a security-based swap, copies of confirmations of all purchases and sales of securities. With respect to a security-based swap, copies of the security-based swap trade acknowledgment and verification made in compliance with § 240.15Fi-2.

(7) For each security-based swap account, a record of the unique identification code of such counterparty, the name and address of such counterparty, and a record of the authorization of each person the counterparty has granted authority to transact business in the security-based swap account.

(8) A record of all puts, calls, spreads, straddles and other options in which such security-based swap dealer or major security-based swap participant has any direct or indirect interest or which such security-based

swap dealer or major security-based swap participant has granted or guaranteed, containing, at least, an identification of the security, and the number of units involved.

(9) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of net capital or tangible net worth, as applicable, as of the trial balance date, pursuant to § 240.18a-1 or § 240.18a-2, respectively. Such trial balances and computations must be prepared currently at least once per month.

(10)(i) A questionnaire or application for employment executed by each “associated person” (as defined in paragraph (d) of this section) of the security-based swap dealer or major security-based swap participant who effects or is involved in effecting security-based swaps on the security-based swap dealer’s or major security-based swap participant’s behalf, which questionnaire or application must be approved in writing by an authorized representative of the security-based swap dealer or major security-based swap participant and must contain at least the following information with respect to the associated person:

(A) The associated person’s name, address, social security number, and the starting date of the associated person’s employment or other association with the security-based swap dealer or major security-based swap participant;

(B) The associated person’s date of birth;

(C) A complete, consecutive statement of all the associated person’s business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

(D) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the associated person by any Federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;

(E) A record of any denial, suspension, expulsion or revocation of membership or registration of any broker, dealer, security-based swap dealer or major security-based swap participant with which the associated person was associated in any capacity at the time such action was taken;

(F) A record of any permanent or temporary injunction entered against the associated person, or any broker, dealer, security-based swap dealer or major security-based swap participant with which the associated person was associated in any capacity at the time such injunction was entered;

(G) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker or dealer, security-based swap dealer, major security-based swap participant, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing; and

(H) A record of any other name or names by which the associated person has been known or which the associated person has used.

(ii) A record listing every associated person of the security-based swap dealer or major security-based swap participant which shows, for each associated person, every office of the security-based swap dealer or major security-based swap participant where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, for the security-based swap dealer or major security-based swap participant and the Central Registration Depository number, if any, and every internal identification number or code assigned to that person by the security-based swap dealer or major security-based swap participant.

(11) [Reserved]

(12) A record of the daily calculation of the current exposure and, if applicable, the initial margin amount for each account of a counterparty required under § 240.18a-3(c).

(13) A record of compliance with possession or control requirements under § 240.18a-4(b).

(14) A record of the reserve computation required under § 240.18a-4(c).

(15) A record of each security-based swap transaction that is not verified under § 240.15Fi-2 within five business days of execution that includes, at a minimum, the unique transaction identifier and the counterparty's unique identification code.

(16) A record documenting that the security-based swap dealer has complied with the business conduct standards as required under § 240.15Fh-6.

(17) A record documenting that the security-based swap dealer or major security-based swap participant has complied with the business conduct standards as required under §§ 240.15Fh-1 through 240.15Fh-5 and 240.15Fk-1.

(18) [Reserved]

(b) This paragraph (b) applies only to security-based swap dealers and major security-based swap participants registered under section 15F of the Act for which there is a prudential regulator. Each security-based swap dealer and major security-based swap participant subject to this paragraph (b) must make and keep current the following books and records:

(1) For security-based swaps and any other positions related to the firm's business as such, blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities (including security-based swaps), all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records must show, the account for which each such purchase and sale was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any, including the financial terms for security-based swaps), the trade date, and the name or other designation of the person from whom such securities were purchased or received or to whom sold or delivered. For security-based swaps, such records must also show, for each transaction, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination date, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code.

(2) Ledger accounts (or other records) itemizing separately as to each account for every security-based swap customer or non-customer of such security-based swap dealer or major security-based swap participant, all purchases, sales, receipts and deliveries of securities (including security-based swaps) and commodities for such account and all other debits and credits to such account; and in addition, for a security-based swap, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination date, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code.

(3) For security-based swaps and any securities positions related to the firm's business as a security-based swap dealer or a major security-based swap participant, a securities record or ledger reflecting separately for each:

(i) Security, other than a security-based swap, as of the clearance dates all "long" or "short" positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such security-based swap dealer or major security-based swap participant for its account or for the account of its customers and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

(ii) Security-based swap, the reference security, index, or obligor, the unique transaction identifier, the counterparty's unique identification code, whether it is a "bought" or "sold" position in the security-based swap, whether the security-based swap is cleared or not cleared, and if cleared, identification of the clearing agency where the security-based swap is cleared.

(4) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security-based swap, whether executed or unexecuted. The memorandum must show the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the identity of

each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer, or, if a customer entered the order on an electronic system, a notation of that entry; and, to the extent feasible, the time of execution or cancellation. The memorandum also must include the type of the security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination date, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code. An order entered pursuant to the exercise of discretionary authority by the security-based swap dealer or major security-based swap participant, or associated person thereof, must be so designated. The term *instruction* must include instructions between partners and employees of a security-based swap dealer or major security-based swap participant. The term *time of entry* means the time when the security-based swap dealer or major security-based swap participant transmits the order or instruction for execution.

(5) A memorandum of each purchase or sale of a security-based swap for the account of the security-based swap dealer or major security-based swap participant showing the price. The memorandum must also include the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination date, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code. An order entered pursuant to the exercise of discretionary authority must be so designated.

(6) With respect to a security other than a security-based swap, copies of confirmations of all purchases and sales of securities related to the business of a security-based swap dealer or major security-based swap participant. With respect to a security-based swap, copies of the security-based swap trade acknowledgment and verification made in compliance with § 240.15Fi-2.

(7) For each security-based swap account, a record of the counterparty's unique identification code, the name and address of such counterparty, and a record of the authorization of each person the counterparty has granted authority to transact business in the security-based swap account.

(8)(i) A questionnaire or application for employment executed by each “associated person” (as defined in paragraph (c) of this section) of the security-based swap dealer or major security-based swap participant who effects or is involved in effecting security-based swaps on the security-based swap dealer’s or major security-based swap participant’s behalf, which questionnaire or application must be approved in writing by an authorized representative of the security-based swap dealer or major security-based swap participant and must contain at least the following information with respect to the associated person:

(A) The associated person’s name, address, social security number, and the starting date of the associated person’s employment or other association with the security-based swap dealer or major security-based swap participant;

(B) The associated person’s date of birth;

(C) A complete, consecutive statement of all the associated person’s business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

(D) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the associated person by any Federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;

(E) A record of any denial, suspension, expulsion or revocation of membership or registration of any broker, dealer, security-based swap dealer or major security-based swap participant with which the associated person was associated in any capacity at the time such action was taken;

(F) A record of any permanent or temporary injunction entered against the associated person, or any broker, dealer, security-based swap dealer or major security-based swap participant with which the associated person was associated in any capacity at the time such injunction was entered;

(G) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker or dealer, security-based swap dealer, major security-based swap participant, investment company,

investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing; and

(H) A record of any other name or names by which the associated person has been known or which the associated person has used.

(ii) A record listing every associated person of the security-based swap dealer or major security-based swap participant which shows, for each associated person, every office of the security-based swap dealer or major security-based swap participant where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, for the security-based swap dealer or major security-based swap participant and every internal identification number or code assigned to that person by the security-based swap dealer or major security-based swap participant.

(9) A record of compliance with possession or control requirements under § 240.18a-4(b).

(10) A record of the reserve computation required under § 240.18a-4(c).

(11) A record of each security-based swap transaction that is not verified under § 240.15Fi-2 within five business days of execution that includes, at a minimum, the unique transaction identifier and the counterparty's unique identification code.

(12) A record documenting that the security-based swap dealer has complied with the business conduct standards as required under § 240.15Fh-6.

(13) A record documenting that the security-based swap dealer or major security-based swap participant has complied with the business conduct standards as required under § 240.15Fh-1 through § 240.15Fh-5 and § 240.15Fk-1.

(14) [Reserved]

(c) A security-based swap dealer or major security-based swap participant may comply with the recordkeeping requirements of the Commodity Exchange Act and chapter I of this title applicable to swap

dealers and major swap participants in lieu of complying with paragraphs (a)(1), (3), and (4) or paragraphs (b)(1) through (3) of this section, as applicable, solely with respect to required information regarding security-based swap transactions and positions if:

(1) The security-based swap dealer or major security-based swap participant is registered as a security-based swap dealer or major security-based swap participant pursuant to section 15F of the Act;

(2) The security-based swap dealer or major security-based swap participant is registered as a swap dealer or major swap participant pursuant to section 4s of the Commodity Exchange Act and chapter I of this title;

(3) The security-based swap dealer or major security-based swap participant is subject to 17 CFR 23.201, 23.202, 23.402, and 23.501 with respect to its swap-related books and records;

(4) The security-based swap dealer or major security-based swap participant preserves all of the data elements necessary to create the records required by paragraphs (a)(1), (3), and (4) or paragraphs (b)(1) through (3) of this section, as applicable, as they pertain to security-based swap and swap transactions and positions;

(5) The security-based swap dealer or major security-based swap participant upon request furnishes promptly to representatives of the Commission the records required by paragraphs (a)(1), (3), and (4) or paragraphs (b)(1) through (3) of this section, as applicable, as well as the records required by 17 CFR 23.201, 23.202, 23.402, and 23.501 as they pertain to security-based swap and swap transactions and positions in the format applicable to that category of record as set forth in this section; and

(6) The security-based swap dealer or major security-based swap participant provides notice of its intent to utilize this paragraph (c) by notifying in writing the Commission, both at the principal office of the Commission in Washington, DC and at the regional office of the Commission for the region in which the registrant has its principal place of business.

(d)(1) The term *associated person* means for purposes of this section a *person associated with a security-based swap dealer or major security-based swap participant* as that term is defined in section 3(a)(70) of the Act (15 U.S.C. 78c(a)(70)).

(2) The term *associated person*, as to an entity supervised by a prudential regulator, includes only those persons whose activities relate to its business as a security-based swap dealer or major security-based swap participant.

12. Section 240.18a-6 is added to read as follows:

§ 240.18a-6 Records to be preserved by certain security-based swap dealers and major security-based swap participants.

This section applies to the following types of entities: a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10) that is not also a broker or dealer, including an *OTC derivatives dealer* as that term is defined in § 240.3b-12, registered pursuant to section 15 of the Act (15 U.S.C. 78o); and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an *OTC derivatives dealer*, registered pursuant to section 15 of the Act. Section 240.17a-4 (rather than this section) applies to the following types of entities: a member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange; a broker or dealer who transacts a business in securities through the medium of a member of a national securities exchange; a broker or dealer, including an *OTC derivatives dealer*, registered pursuant to section 15 of the Act; a security-based swap dealer registered pursuant to section 15F of the Act that is also a broker or dealer, including an *OTC derivatives dealer*, registered pursuant to section 15 of the Act; and a major security-based swap participant registered pursuant to section 15F of the Act that is also a broker or dealer, including an *OTC derivatives dealer*, registered pursuant to section 15 of the Act.

(a)(1) Every security-based swap dealer and major security-based swap participant for which there is no prudential regulator must preserve for a period not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to § 240.18a-5(a)(1) through (4).

(2) Every security-based swap dealer and major security-based swap participant for which there is a prudential regulator must preserve for a period not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to § 240.18a-5(b)(1) through (3).

(b)(1) Every security-based swap dealer and major security-based swap participant for which there is no prudential regulator must preserve for a period of not less than three years, the first two years in an easily accessible place:

(i) All records required to be made pursuant to § 240.18a-5(a)(5) through (9) and (12) through (17).

(ii) All check books, bank statements, cancelled checks, and cash reconciliations.

(iii) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of such security-based swap dealer or major security-based swap participant, as such.

(iv) Originals of all communications received and copies of all communications sent (and any approvals thereof) by the security-based swap dealer or major security-based swap participant (including inter-office memoranda and communications) relating to its business as such. As used in this paragraph (b)(1)(iv), the term “communications” includes sales scripts and recordings of telephone calls required to be maintained pursuant to section 15F(g)(1) of the Act (15 U.S.C. 78o-10(g)(1)).

(v) All trial balances and computations of net capital or tangible net worth requirements (and working papers in connection therewith), as applicable, financial statements, branch office reconciliations, and internal audit working papers, relating to the business of such security-based swap dealer or major security-based swap participant as such.

(vi) All guarantees of security-based swap accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any security-based swap account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(vii) All written agreements (or copies thereof) entered into by such security-based swap dealer or major security-based swap participant relating to its business as such, including agreements with respect to any account. Written agreements with respect to a security-based swap customer or non-customer, including governing documents or any document establishing the terms and conditions of the customer’s or non-customer’s security-based swaps must be maintained with the customer’s or non-customer’s account records.

(viii) Records which contain the following information in support of amounts included in the report prepared as of the audit date on Part II of Form X-17A-5 (§ 249.617 of this chapter) and in annual financial statements required by § 240.18a-7(d):

(A) Money balance and position, long or short, including description, quantity, price, and valuation of each security, including contractual commitments, in security-based swap customers' accounts, in fully secured accounts, partly secured accounts, unsecured accounts, and in securities accounts payable to security-based swap customers;

(B) Money balance and position, long or short, including description, quantity, price, and valuation of each security, including contractual commitments, in security-based swap non-customers' accounts, in fully secured accounts, partly secured accounts, unsecured accounts, and in security-based swap accounts payable to non-security-based swap customers;

(C) Position, long or short, including description, quantity, price, and valuation of each security, including contractual commitments, included in the Computation of Net Capital as commitments, securities owned, securities owned not readily marketable, and other investments owned not readily marketable;

(D) Description of futures commodity contracts or swaps, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in customers' and non-customers' accounts;

(E) Description of futures commodity contracts or swaps, contract value on trade date, market value, gain or loss and liquidating equity or deficit in trading and investment accounts;

(F) Description, money balance, quantity, price, and valuation of each spot commodity and swap position or commitments in customers' and non-customers' accounts;

(G) Description, money balance, quantity, price, and valuation of each spot commodity and swap position or commitments in trading and investment accounts;

(H) Number of shares, description of security, exercise price, cost, and market value of put and call options, including short out of the money options having no market or exercise value, showing listed and unlisted put and call options separately;

(I) Quantity, price, and valuation of each security underlying the haircut for undue concentration made in the Computation of Net Capital pursuant to § 240.18a-1;

(J) Description, quantity, price, and valuation of each security and commodity position or contractual commitment, long or short, in each joint account in which the security-based swap dealer or major security-based swap participant has an interest, including each participant's interest and margin deposit;

(K) Description, settlement date, contract amount, quantity, market price, and valuation for each aged failed to deliver requiring a charge in the Computation of Net Capital pursuant to § 240.18a-1;

(L) Detail relating to information for possession or control requirements under § 240.18a-4 and reported on Part II of Form X-17A-5 (§ 249.617 of this chapter);

(M) Detail of all items, not otherwise substantiated, which are charged or credited in the Computation of Net Capital pursuant to §§ 240.18a-1 and 240.18a-2, such as cash margin deficiencies, deductions related to securities values and undue concentration, aged securities differences, and insurance claims receivable;

(N) Detail relating to the calculation of the risk margin amount pursuant to § 240.18a-1(c)(6); and

(O) Other schedules which are specifically prescribed by the Commission as necessary to support information reported as required by § 240.18a-7.

(ix) The records required to be made pursuant to § 240.15c3-4 and the results of the periodic reviews conducted pursuant to § 240.15c3-4(d).

(x) The records required to be made pursuant to § 240.18a-1(e)(2)(iv)(F)(1) and (2).

(xi) A copy of information required to be reported under §§ 242.901 through 242.909 of this chapter (Regulation SBSR).

(xii) Copies of documents, communications, disclosures, and notices related to business conduct standards as required under §§ 240.15Fh-1 through 240.15Fh-6 and 240.15Fk-1.

(xiii) Copies of documents used to make a reasonable determination with respect to special entities, including information relating to the financial status, the tax status, and the investment or financing objectives

of the special entity as required under sections 15F(h)(4)(C) and (5)(A) of the Act (15 U.S.C. 78o-10(h)(4)(C) and (5)(A)).

(2) Every security-based swap dealer and major security-based swap participant for which there is a prudential regulator must preserve for a period of not less than three years, the first two years in an easily accessible place:

(i) All records required to be made pursuant to § 240.18a-5(b)(4) through (7) and (9) through (13).

(ii) Originals of all communications received and copies of all communications sent (and any approvals thereof) by the security-based swap dealer or major security-based swap participant (including inter-office memoranda and communications) relating to its business as a security-based swap dealer or major security-based swap participant. As used in this paragraph (b)(2)(ii), the term “communications” includes sales scripts and recordings of telephone calls required to be maintained pursuant to section 15F(g)(1) of the Act (15 U.S.C. 78o-10(g)(1)).

(iii) All guarantees of security-based swap accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any security-based swap account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(iv) All written agreements (or copies thereof) entered into by such security-based swap dealer or major security-based swap participant relating to its business as a security-based swap dealer or major security-based swap participant, including agreements with respect to any account. Written agreements with respect to a security-based swap customer or non-customer, including governing documents or any document establishing the terms and conditions of the customer’s or non-customer’s security-based swaps, must be maintained with the customer’s or non-customer’s account records.

(v) Detail relating to information for possession or control requirements under § 240.18a-4 and reported on Part IIC of Form X-17A-5 (§ 249.617 of this chapter) that is in support of amounts included in the report prepared as of the audit date on Part IIC of Form X-17A-5 (§ 249.617 of this chapter) and in the registrant’s annual reports required by § 240.18a-7(c).

(vi) A copy of information required to be reported under Regulation SBSR (§§ 242.901 through 242.909 of this chapter).

(vii) Copies of documents, communications, disclosures, and notices related to business conduct standards as required under §§ 240.15Fh-1 through 240.15Fh-6 and 240.15Fk-1.

(viii) Copies of documents used to make a reasonable determination with respect to special entities, including information relating to the financial status, the tax status, and the investment or financing objectives of the special entity as required under sections 15F(h)(4)(C) and (5)(A) of the Act.

(c) Every security-based swap dealer and major security-based swap participant subject to this section must preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books, and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms SBSE (§ 249.1600 of this chapter), all Forms SBSE-A (§ 249.1600a of this chapter), all Forms SBSE-C (§ 249.1600c of this chapter), all Forms SBSE-W (§ 249.1601 of this chapter), all amendments to these forms, and all licenses or other documentation showing the registration of the security-based swap dealer or major security-based swap participant with any securities regulatory authority or the Commodity Futures Trading Commission.

(d) Every security-based swap dealer and major security-based swap participant subject to this section must maintain and preserve in an easily accessible place:

(1) All records required under § 240.18a-5(a)(10) or (b)(8) until at least three years after the associated person's employment and any other connection with the security-based swap dealer or major security-based swap participant has terminated.

(2)(i) For security-based swap dealers and major security-based swap participants for which there is not a prudential regulator, each report which a securities regulatory authority or the Commodity Futures Trading Commission has requested or required the security-based swap dealer or major security-based swap participant

to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority or Commodity Futures Trading Commission examination report until three years after the date of the report.

(ii) For security-based swap dealers and major security-based swap participants for which there is a prudential regulator, each report related to security-based swap activities which a securities regulatory authority, the Commodity Futures Trading Commission, or a prudential regulator has requested or required the security-based swap dealer or major security-based swap participant to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority, Commodity Futures Trading Commission, or prudential regulator examination report until three years after the date of the report.

(3)(i) For security-based swap dealers and major security-based swap participants for which there is not a prudential regulator, each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the security-based swap dealer or major security-based swap participant with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the security-based swap dealer or major security-based swap participant until three years after the termination of the use of the manual.

(ii) For security-based swap dealers and major security-based swap participants for which there is a prudential regulator, each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the security-based swap dealer or major security-based swap participant with respect to compliance with applicable laws and rules relating to security-based swap activities, and supervision of the activities of each natural person associated with the security-based swap dealer or major security-based swap participant until three years after the termination of the use of the manual.

(e) The records required to be maintained and preserved pursuant to §§ 240.18a-5 and 240.18a-6 may be immediately produced or reproduced by means of an *electronic storage system* (as defined in this paragraph (e)) that meets the conditions set forth in this paragraph (e) and be maintained and preserved for the required time in that form.

(1) For purposes of this section, the term *electronic storage system* means any digital storage system that meets the applicable conditions set forth in this paragraph (e).

(2) If an electronic storage system is used by a security-based swap dealer or major security-based swap participant, it must:

(i) Verify automatically the quality and accuracy of the electronic storage system recording process;

(ii) If applicable, serialize the original and duplicate units of the storage media, and time-date for the required period of retention the information placed in such electronic storage system; and

(iii) Have the capacity to readily download into a readable format indexes and records preserved in the electronic storage system.

(3) If a security-based swap dealer or major security-based swap participant uses an electronic storage system, it must:

(i) At all times have available, for examination by the staff of the Commission, facilities for immediate, easily readable projection or production of records or images maintained on the electronic storage system and for producing easily readable representations of those records or images.

(ii) Be ready at all times to immediately provide in a readable format any record or index stored on the electronic storage system which the staff of the Commission may request.

(iii) Store separately from the original a duplicate copy of a record stored on the electronic storage system for the time required.

(iv) Organize and index accurately all information maintained on both original and any duplicate storage system.

(A) At all times, a security-based swap dealer or major security-based swap participant must be able to have such indexes available for examination by the staff of the Commission.

(B) Each index must be duplicated and the duplicate copies must be stored separately from the original copy of each index.

(C) Original and duplicate indexes must be preserved for the time required for the indexed records.

(v) Have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to §§ 240.18a-5 and 240.18a-6 to the electronic storage system and inputting of any changes made to every original and duplicate record maintained and preserved thereby.

(A) At all times the security-based swap dealer or major security-based swap participant must be able to have the results of such audit system available for examination by the staff of the Commission.

(B) The audit results must be preserved for the time required for the audited records.

(vi) The security-based swap dealer or major security-based swap participant must maintain, keep current, and provide promptly upon request by the staff of the Commission all information necessary to access records and indexes stored in the electronic storage system; or place in escrow and keep current a copy of the physical and logical file format of the electronic storage system, the field format of all different information types written on the electronic storage system and the source code, together with the appropriate documentation and information necessary to access records and indexes.

(f)(1) If the records required to be maintained and preserved pursuant to the provisions of §§ 240.18a-5 and 240.18a-6 are prepared or maintained by a third party on behalf of the security-based swap dealer or major security-based swap participant, the third party must file with the Commission a written undertaking in a form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the security-based swap dealer or major security-based swap participant and will be surrendered promptly on request of the security-based swap dealer or major security-based swap participant and including the following provision:

With respect to any books and records maintained or preserved on behalf of [SBSD or MSBSP], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete, and current hard copies of any or all or any part of such books and records.

(2) Agreement with an outside entity will not relieve such security-based swap dealer or major security-based swap participant from the responsibility to prepare and maintain records as specified in this section or in § 240.18a-5.

(g) Every security-based swap dealer and major security-based swap participant subject to this section must furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the security-based swap dealer or major security-based swap participant that are required to be preserved under this section, or any other records of the security-based swap dealer or major security-based swap participant subject to examination or required to be made or maintained pursuant to section 15F of the Act that are requested by a representative of the Commission.

(h) When used in this section:

(1) The term *securities regulatory authority* means the Commission, any self-regulatory organization, or any securities commission (or any agency or office performing like functions) of the States.

(2) The term *associated person* has the meaning set forth in § 240.18a-5(d).

13. Section 240.18a-7 is added to read as follows:

§ 240.18a-7 Reports to be made by certain security-based swap dealers and major security-based swap participants.

This section applies to the following types of entities: a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10) that is not also a broker or dealer, other than an *OTC derivatives dealer* as that term is defined in § 240.3b-12, registered pursuant to section 15 of the Act (15 U.S.C. 78o); a security-based swap dealer registered pursuant to section 15F of the Act that is also an OTC derivatives dealer registered pursuant to section 15 of the Act; and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act. Section 240.17a-5 (rather than this section) applies to the following types of entities: except as provided above, a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; a broker or dealer, other than an OTC derivatives dealer, registered pursuant to section

15 of the Act that is also a security-based swap dealer registered pursuant to section 15F of the Act; and a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a major-security-based swap participant registered pursuant to section 15F of the Act.

(a) *Filing of reports.* (1) Every security-based swap dealer or major security-based swap participant for which there is no prudential regulator must file with the Commission or its designee Part II of Form X-17A-5 (§ 249.617 of this chapter) within 17 business days after the end of each month.

(2) Every security-based swap dealer or major security-based swap participant for which there is a prudential regulator must file with the Commission or its designee Part IIC of Form X-17A-5 (§ 249.617 of this chapter) within 30 calendar days after the end of each calendar quarter.

(3) Security-based swap dealers that have been authorized by the Commission to compute net capital pursuant to § 240.18a-1(d), must file the following additional reports with the Commission:

(i) For each product for which the security-based swap dealer calculates a deduction for market risk other than in accordance with § 240.18a-1(e)(1)(i) and (iii), the product category and the amount of the deduction for market risk within 17 business days after the end of the month;

(ii) A graph reflecting, for each business line, the daily intra-month value at risk within 17 business days after the end of the month;

(iii) The aggregate value at risk for the security-based swap dealer within 17 business days after end of the month;

(iv) For each product for which the security-based swap dealer uses scenario analysis, the product category and the deduction for market risk within 17 business days after the end of the month;

(v) Credit risk information on security-based swap, mixed swap and swap exposures, within 17 business days after the end of the month, including:

(A) Overall current exposure;

(B) Current exposure (including commitments) listed by counterparty for the 15 largest exposures;

(C) The ten largest commitments listed by counterparty;

(D) The broker's or dealer's maximum potential exposure listed by counterparty for the 15 largest exposures;

(E) The broker's or dealer's aggregate maximum potential exposure;

(F) A summary report reflecting the broker's or dealer's current and maximum potential exposures by credit rating category; and

(G) A summary report reflecting the broker's or dealer's current exposure for each of the top ten countries to which the broker or dealer is exposed (by residence of the main operating group of the counterparty);

(vi) Regular risk reports supplied to the security-based swap dealer's senior management in the format described in the application, within 17 business days after the end of the month;

(vii) [Reserved]

(viii) A report identifying the number of business days for which the actual daily net trading loss exceeded the corresponding daily VaR within 17 business days after the end of each calendar quarter; and

(ix) The results of backtesting of all internal models used to compute allowable capital, including VaR and credit risk models, indicating the number of backtesting exceptions within 17 business days after the end of each calendar quarter.

(b) *Customer disclosures.* (1) Every security-based swap dealer or major security-based swap participant for which there is no prudential regulator must make publicly available on its website within 10 business days after the date the firm is required to file with the Commission the annual reports pursuant to paragraph (c) of this section:

(i) A Statement of Financial Condition with appropriate notes prepared in accordance with U.S. generally accepted accounting principles which must be audited;

(ii) A statement of the amount of the security-based swap dealer's net capital and its required net capital, computed in accordance with § 240.18a-1. Such statement must include summary financial statements

of subsidiaries consolidated pursuant to § 240.18a-1c (appendix C to § 240.18a-1 (Rule 18a-1)), where material, and the effect thereof on the net capital and required net capital of the security-based swap dealer; and

(iii) If, in connection with the most recent annual reports required under paragraph (c) of this section, the report of the independent public accountant required under paragraph (c)(1)(i)(C) of this section covering the report of the security-based swap dealer required under paragraph (c)(1)(i)(B)(I) of this section identifies one or more material weaknesses, a copy of the report.

(2) Every security-based swap dealer or major security-based swap participant for which there is no prudential regulator must make publicly available on its website unaudited statements as of the date that is 6 months after the date of the most recent audited statements filed with the Commission under paragraph (c)(1) of this section. These reports must be made publicly available within 30 calendar days of the date of the statements.

(3) The information that is made publicly available pursuant to paragraphs (b)(1) and (2) of this section must also be made available in writing, upon request, to any person that has a security-based swap account. The security-based swap dealer or major security-based swap participant must maintain a toll-free telephone number to receive such requests.

(c) *Annual reports--(1) Reports required to be filed.* (i) Except as provided in paragraph (c)(1)(iii) of this section, every security-based swap dealer or major security-based swap participant registered pursuant to section 15F of the Act for which there is no prudential regulator must file annually, as applicable:

(A) A financial report as described in paragraph (c)(2) of this section;

(B)(I) If the security-based swap dealer did not claim it was exempt from § 240.18a-4 throughout the most recent fiscal year, a compliance report as described in paragraph (c)(3) of this section executed by the person who makes the oath or affirmation under paragraph (d)(1) of this section; or

(2) If the security-based swap dealer did claim it was exempt from § 240.18a-4 throughout the most recent fiscal year, an exemption report as described in paragraph (c)(4) of this section executed by the person who makes the oath or affirmation under paragraph (d)(1) of this section; and

(C) A report prepared by an independent public accountant, under the engagement provisions in paragraph (e) of this section, covering each report required to be filed under paragraphs (c)(1)(i)(A) and (B) of this section, as applicable.

(ii) The reports required to be filed under this paragraph (c) must be as of the same fiscal year end each year, unless a change is approved in writing by the Commission. The original request for a change must be filed at the Commission's principal office in Washington, DC. A copy of the written approval must be sent to the regional office of the Commission for the region in which the security-based swap dealer or major security-based swap participant has its principal place of business.

(iii) A security-based swap dealer or major security-based swap participant succeeding to and continuing the business of another security-based swap dealer or major security-based swap participant need not file reports under this paragraph (c) as of a date in the fiscal year in which the succession occurs if the predecessor security-based swap dealer or major security-based swap participant has filed the reports in compliance with this paragraph (c) as of a date in such fiscal year.

(2) *Financial report.* The financial report must contain:

(i)(A) A Statement of Financial Condition, a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and Statement of Changes in Liabilities Subordinated to Claims of General Creditors. The statements must be prepared in accordance with U.S. generally accepted accounting principles and must be in a format that is consistent with the statements contained in Part II of Form X-17A-5 (§ 249.617 of this chapter).

(B) If there is other comprehensive income in the period(s) presented, the financial report must contain a Statement of Comprehensive Income (as defined in § 210.1-02 of this chapter) in place of a Statement of Income.

(ii) Supporting schedules that include, from Part II of Form X-17A-5 (§ 249.617 of this chapter), a Computation of Net Capital under § 240.18a-1, a Computation of Tangible Net Worth under § 240.18a-2, a Computation for Determination of Security-Based Swap Customer Reserve Requirements under § 240.18a-4a

(Exhibit A of § 240.18a-4), and Information Relating to the Possession or Control Requirements for Security-Based Swap Customers under § 240.18a-4, as applicable.

(iii) If any of the Computation of Net Capital under § 240.18a-1, the Computation of Tangible Net Worth under § 240.18a-2, or the Computation for Determination of Security-Based Swap Customer Reserve Requirements under Exhibit A of § 240.18a-4 in the financial report is materially different from the corresponding computation in the most recent Part II of Form X-17A-5 (§ 249.617 of this chapter) filed by the registrant pursuant to paragraph (a) of this section, a reconciliation, including appropriate explanations, between the computation in the financial report and the computation in the most recent Part II of Form X-17A-5 filed by the registrant. If no material differences exist, a statement so indicating must be included in the financial report.

(3) *Compliance report.* (i) The compliance report must contain:

(A) Statements as to whether:

(1) The security-based swap dealer has established and maintained Internal Control Over Compliance as that term is defined in paragraph (c)(3)(ii) of this section;

(2) The Internal Control Over Compliance of the security-based swap dealer was effective during the most recent fiscal year;

(3) The Internal Control Over Compliance of the security-based swap dealer was effective as of the end of the most recent fiscal year;

(4) The security-based swap dealer was in compliance with §§ 240.18a-1 and 240.18a-4(c) as of the end of the most recent fiscal year; and

(5) The information the security-based swap dealer used to state whether it was in compliance with §§ 240.18a-1 and 240.18a-4(c) was derived from the books and records of the security-based swap dealer.

(B) If applicable, a description of each identified material weakness in the Internal Control Over Compliance of the security-based swap dealer during the most recent fiscal year.

(C) If applicable, a description of an instance of non-compliance with § 240.18a-1 or § 240.18a-4(c) as of the end of the most recent fiscal year.

(ii) The term *Internal Control Over Compliance* means internal controls that have the objective of providing the security-based swap dealer with reasonable assurance that non-compliance with § 240.18a-1, § 240.18a-4(c), § 240.18a-9, or § 240.17a-13, as applicable, will be prevented or detected on a timely basis.

(iii) The security-based swap dealer is not permitted to conclude that its Internal Control Over Compliance was effective during the most recent fiscal year if there were one or more material weaknesses in its Internal Control Over Compliance during the most recent fiscal year. The security-based swap dealer is not permitted to conclude that its Internal Control Over Compliance was effective as of the end of the most recent fiscal year if there were one or more material weaknesses in its internal control as of the end of the most recent fiscal year. A *material weakness* is a deficiency, or a combination of deficiencies, in Internal Control Over Compliance such that there is a reasonable possibility that non-compliance with § 240.18a-1 or § 240.18a-4(c) will not be prevented, or detected on a timely basis or that non-compliance to a material extent with § 240.18a-4, except for paragraph (c), or § 240.18a-9 or § 240.17a-13, as applicable, will not be prevented or detected on a timely basis. A deficiency in Internal Control Over Compliance exists when the design or operation of a control does not allow the management or employees of the security-based swap dealer in the normal course of performing their assigned functions, to prevent or detect on a timely basis non-compliance with § 240.18a-1, § 240.18a-4, § 240.18a-9, or § 240.17a-13, as applicable.

(4) *Exemption report.* The exemption report must contain the following statements made to the best knowledge and belief of the security-based swap dealer:

(i) A statement that the security-based swap dealer met the exemption provisions in § 240.18a-4(f) throughout the most recent fiscal year without exception or that it met the exemption provisions in § 240.18a-4(f) throughout the most recent fiscal year except as described under paragraph (c)(4)(ii) of this section; and

(ii) If applicable, a statement that identifies each exception during the most recent fiscal year in meeting the exemption provisions in § 240.18a-4(f) and that briefly describes the nature of each exception and the approximate date(s) on which the exception existed.

(5) *Timing of filing.* The annual reports must be filed not more than sixty (60) calendar days after the end of the fiscal year of the security-based swap dealer or major security-based swap participant.

(6) *Location of filing.* The annual reports must be filed with the Commission at the regional office of the Commission for the region in which the security-based swap dealer or major security-based swap participant has its principal place of business and the Commission's principal office in Washington, DC, or the annual reports may be filed with the Commission electronically in accordance with directions provided on the Commission's website.

(d) *Nature and form of reports.* The annual reports filed pursuant to paragraph (c) of this section must be prepared and filed in accordance with the following requirements:

(1)(i) The security-based swap dealer or major security-based swap participant must attach to each of the confidential and non-confidential portions of the annual reports separately bound under paragraph (d)(2) of this section a complete and executed Part III of Form X-17A-5 (§ 249.617 of this chapter). The security-based swap dealer or major security-based swap participant must attach to the financial report an oath or affirmation that, to the best knowledge and belief of the person making the oath or affirmation:

(A) The financial report is true and correct; and

(B) Neither the registrant, nor any partner, officer, director, or equivalent person, as the case may be, has any proprietary interest in any account classified solely as that of a customer.

(ii) The oath or affirmation must be made before a person duly authorized to administer such oaths or affirmations. If the security-based swap dealer or major security-based swap participant is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer; or if a limited liability company or limited liability partnership, by the chief executive officer, chief financial officer, manager, managing member, or those members vested with management authority for the limited liability company or limited liability partnership.

(2) The annual reports filed under paragraph (c) of this section are not confidential, except that, if the Statement of Financial Condition is in a format that is consistent with Part II of Form X-17A-5 (§ 249.617 of

this chapter), and is bound separately from the balance of the annual reports filed under paragraph (c) of this section, and each page of the balance of the annual report is stamped “confidential,” then the balance of the annual reports will be deemed confidential to the extent permitted by law. However, the annual reports, including the confidential portions, will be available for official use by any official or employee of the U.S. or any State, and by any other person if the Commission authorizes disclosure of the annual reports to that person as being in the public interest. Nothing contained in this paragraph (d)(2) may be construed to be in derogation of the right of customers of a security-based swap dealer or major security-based swap participant, upon request to the security-based swap dealer or major security-based swap participant, to obtain information relative to its financial condition.

(e) *Independent public accountant--(1) Qualifications of independent public accountant.* The independent public accountant must be qualified and independent in accordance with § 210.2-01 of this chapter.

(2) *Statement regarding independent public accountant.* (i) Every security-based swap dealer or major security-based swap participant that is required to file annual reports under paragraph (c) of this section must file no later than December 10 of each year (or 30 days after effective date of its registration as a security-based swap dealer or major security-based swap participant if earlier) a statement as prescribed in paragraph (e)(2)(ii) of this section with the Commission's principal office in Washington, DC and the regional office of the Commission for the region in which its principal place of business is located. The statement must be dated no later than December 1 (or 20 calendar days after the effective date of its registration as a security-based swap dealer or major security-based swap participant, if earlier). If the engagement of an independent public accountant is of a continuing nature, providing for successive engagements, no further filing is required. If the engagement is for a single year, or if the most recent engagement has been terminated or amended, a new statement must be filed by the required date.

(ii) The statement must be headed "Statement regarding independent public accountant under Rule 18a-7(e)(2)" and must contain the following information and representations:

(A) Name, address, telephone number and registration number of the security-based swap dealer or major security-based swap participant.

(B) Name, address, and telephone number of the independent public accountant.

(C) The date of the fiscal year of the annual reports of the security-based swap dealer or major security-based swap participant covered by the engagement.

(D) Whether the engagement is for a single year or is of a continuing nature.

(E) A representation that the independent public accountant has undertaken the items enumerated in paragraphs (f)(1) and (2) of this section.

(3) *Replacement of accountant.* A security-based swap dealer or major security-based swap participant must file a notice that must be received by the Commission's principal office in Washington, DC and the regional office of the Commission for the region in which its principal place of business is located not more than 15 business days after:

(i) The security-based swap dealer or major security-based swap participant has notified the independent public accountant that provided the reports the security-based swap dealer or major security-based swap participant filed under paragraph (c)(1)(i)(C) of this section for the most recent fiscal year that the independent public accountant's services will not be used in future engagements; or

(ii) The security-based swap dealer or major security-based swap participant has notified an independent public accountant that was engaged to provide the reports required under paragraph (c)(1)(i)(C) of this section that the engagement has been terminated; or

(iii) An independent public accountant has notified the security-based swap dealer or major security-based swap participant that the independent public accountant would not continue under an engagement to provide the reports required under paragraph (c)(1)(i)(C) of this section; or

(iv) A new independent public accountant has been engaged to provide the reports required under paragraph (c)(1)(i)(C) of this section without any notice of termination having been given to or by the previously engaged independent public accountant.

(v) The notice must include:

(A) The date of notification of the termination of the engagement or of the engagement of the new independent public accountant, as applicable; and

(B) The details of any issues arising during the 24 months (or the period of the engagement, if less than 24 months) preceding the termination or new engagement relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission, which issues, if not resolved to the satisfaction of the former independent public accountant, would have caused the independent public accountant to make reference to them in the report of the independent public accountant. The issues required to be reported include both those resolved to the former independent public accountant's satisfaction and those not resolved to the former accountant's satisfaction. Issues contemplated by this section are those which occur at the decision-making level – that is, between principal financial officers of the security-based swap dealer or major security-based swap participant and personnel of the accounting firm responsible for rendering its report. The notice must also state whether the accountant's report filed under paragraph (c)(1)(i)(C) of this section for any of the past two fiscal years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainties, audit scope, or accounting principles, and must describe the nature of each such adverse opinion, disclaimer of opinion, or qualification. The security-based swap dealer or major security-based swap participant must also request the former independent public accountant to furnish the security-based swap dealer or major security-based swap participant with a letter addressed to the Commission stating whether the independent public accountant agrees with the statements contained in the notice of the security-based swap dealer or major security-based swap participant and, if not, stating the respects in which the independent public accountant does not agree. The security-based swap dealer or major security-based swap participant must file three copies of the notice and the accountant's letter, one copy of which must be manually signed by the sole proprietor, or a general partner or a duly authorized corporate, limited liability company, or limited liability partnership officer or member, as appropriate, and by the independent public accountant, respectively.

(f) *Engagement of the independent public accountant.* The independent public accountant engaged by the security-based swap dealer or major security-based swap participant to provide the reports required under paragraph (c)(1)(i)(C) of this section must, as part of the engagement, undertake the following, as applicable:

(1) To prepare an independent public accountant's report based on an examination of the financial report required to be filed by the security-based swap dealer or major security-based swap participant under paragraph (c)(1)(i)(A) of this section in accordance with generally accepted auditing standards in the United States or the standards of the Public Company Accounting Oversight Board; and

(2)(i) To prepare an independent public accountant's report based on an examination of the statements required under paragraphs (c)(3)(i)(A)(2) through (5) of this section in the compliance report required to be filed by the security-based swap dealer under paragraph (c)(1)(i)(B)(1) of this section in accordance with generally accepted auditing standards in the United States or the standards of the Public Company Accounting Oversight Board; or

(ii) To prepare an independent public accountant's report based on a review of the statements required under paragraphs (c)(4)(i) through (ii) of this section in the exemption report required to be filed by the security-based swap dealer under paragraph (c)(1)(i)(B)(2) of this section in accordance with generally accepted auditing standards in the United States or the standards of the Public Company Accounting Oversight Board.

(g) *Notification of non-compliance or material weakness.* If, during the course of preparing the independent public accountant's reports required under paragraph (c)(1)(i)(C) of this section, the independent public accountant determines that:

(1) A security-based swap dealer is not in compliance with § 240.18a-1, § 240.18a-4, § 240.18a-9, or § 240.17a-13, as applicable, or the independent public accountant determines that any material weaknesses (as defined in paragraph (c)(3)(iii) of this section) exist, the independent public accountant must immediately notify the chief financial officer of the security-based swap dealer of the nature of the non-compliance or material weakness. If the notice from the accountant concerns an instance of non-compliance that would require a security-based swap dealer to provide a notification under § 240.18a-8, or if the notice concerns a material

weakness, the security-based swap dealer must provide a notification in accordance with § 240.18a-8, as applicable, and provide a copy of the notification to the independent public accountant. If the independent public accountant does not receive the notification within one business day, or if the independent public accountant does not agree with the statements in the notification, then the independent public accountant must notify the Commission within one business day. The report from the accountant must, if the security-based swap dealer failed to file a notification, describe any instances of non-compliance that required a notification under § 240.18a-8 or any material weakness. If the security-based swap dealer filed a notification, the report from the accountant must detail the aspects of the notification of the security-based swap dealer with which the accountant does not agree; or

(2) A major security-based swap participant is not in compliance with § 240.18a-2, the independent public accountant must immediately notify the chief financial officer of the major security-based swap participant of the nature of the non-compliance. If the notice from the accountant concerns an instance of non-compliance that would require a major security-based swap participant to provide a notification under § 240.18a-8, the major security-based swap participant must provide a notification in accordance with § 240.18a-8 and provide a copy of the notification to the independent public accountant. If the independent public accountant does not receive the notification within one business day, or if the independent public accountant does not agree with the statements in the notification, then the independent public accountant must notify the Commission within one business day. The report from the accountant must, if the major security-based swap participant failed to file a notification, describe any instances of non-compliance that required a notification under § 240.18a-8. If the major security-based swap participant filed a notification, the report from the accountant must detail the aspects of the notification of the major security-based swap participant with which the accountant does not agree.

Note 1 to paragraph (g): The attention of the security-based swap dealer, major security-based swap participant, and the independent public accountant is called to the fact that under § 240.18a-8(a), among other things, a security-based swap dealer or major security-based swap participant whose net capital or tangible net

worth, as applicable, declines below the minimum required pursuant to § 240.18a-1 or § 240.18a-2, as applicable, must give notice of such deficiency that same day in accordance with § 240.18a-8(h) and the notice must specify the security-based swap dealer's net capital requirement and its current amount of net capital, or the extent of the major security-based swap participant's failure to maintain positive tangible net worth, as applicable.

(h) *Reports of the independent public accountant required under paragraph (c)(1)(i)(C) of this section--*

(1) *Technical requirements.* The independent public accountant's reports must:

- (i) Be dated;
- (ii) Be signed manually;
- (iii) Indicate the city and state where issued; and
- (iv) Identify without detailed enumeration the items covered by the reports.

(2) *Representations.* The independent public accountant's reports must:

(i) State whether the examinations were made in accordance with generally accepted auditing standards in the United States or the standards of the Public Company Accounting Oversight Board; and

(ii) Identify any examination procedures deemed necessary by the independent public accountant under the circumstances of the particular case which have been omitted and the reason for their omission.

(iii) Nothing in this section may be construed to imply authority for the omission of any procedure that independent public accountants would ordinarily employ in the course of an examination for the purpose of expressing the opinions required under this section.

(3) *Opinion to be expressed.* The independent public accountant's reports must state clearly:

(i) The opinion of the independent public accountant with respect to the financial report required under paragraph (c)(1)(i)(C) of this section and the accounting principles and practices reflected in that report;

(ii) The opinion of the independent public accountant with respect to the financial report required under paragraph (c)(1)(i)(C) of this section, as to the consistency of the application of the accounting principles, or as to any changes in those principles which have a material effect on the financial statements; and

(iii)(A) The opinion of the independent public accountant with respect to the statements required under paragraphs (c)(3)(i)(A)(2) through (5) of this section in the compliance report required under paragraph (c)(1)(i)(B)(1) of this section; or

(B) The conclusion of the independent public accountant with respect to the statements required under paragraphs (c)(4)(i) and (ii) of this section in the exemption report required under paragraph (c)(1)(i)(B)(2) of this section.

(4) *Exceptions.* Any matters to which the independent public accountant takes exception must be clearly identified, the exceptions must be specifically and clearly stated, and, to the extent practicable, the effect of each such exception on any related items contained in the annual reports required under paragraph (c) of this section must be given.

(i) *Notification of change of fiscal year.* (1) In the event any security-based swap dealer or major security-based swap participant for which there is no prudential regulator finds it necessary to change its fiscal year, it must file, with the Commission's principal office in Washington, DC and the regional office of the Commission for the region in which the security-based swap dealer or major security-based swap participant has its principal place of business, a notice of such change.

(2) Such notice must contain a detailed explanation of the reasons for the change. Any change in the filing period for the annual reports must be approved by the Commission.

(j) *Filing requirements.* For purposes of filing requirements as described in this section, filing will be deemed to have been accomplished upon receipt at the Commission's principal office in Washington, DC, with duplicate originals simultaneously filed at the locations prescribed in the particular paragraph of this section which is applicable.

14. Section 240.18a-8 is added to read as follows:

§ 240.18a-8 Notification provisions for security-based swap dealers and major security-based swap participants.

This section applies to the following types of entities: a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10) that is not also a broker or dealer, other than an *OTC derivatives dealer* as that term is defined in § 240.3b-12, registered pursuant to section 15 of the Act (15 U.S.C. 78o); a security-based swap dealer registered pursuant to section 15F of the Act that is also an OTC derivatives dealer; and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act. Section 240.17a-11 (rather than this section) applies to the following types of entities: except as provided above, a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; a broker or dealer, other than an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a security-based swap dealer registered pursuant to section 15F of the Act; and a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a major-security-based swap participant registered pursuant to section 15F of the Act.

(a)(1)(i) Every security-based swap dealer for which there is no prudential regulator whose net capital declines below the minimum amount required pursuant to § 240.18a-1 must give notice of such deficiency that same day in accordance with paragraph (h) of this section. The notice must specify the security-based swap dealer's net capital requirement and its current amount of net capital. If a security-based swap dealer is informed by the Commission that it is, or has been, in violation of § 240.18a-1 and the security-based swap dealer has not given notice of the capital deficiency under this section, the security-based swap dealer, even if it does not agree that it is, or has been, in violation of § 240.18a-1, must give notice of the claimed deficiency, which notice may specify the security-based swap dealer's reasons for its disagreement.

(ii) Every security-based swap dealer for which there is no prudential regulator whose tentative net capital declines below the minimum amount required pursuant to § 240.18a-1 must give notice of such deficiency that same day in accordance with paragraph (h) of this section. The notice must specify the security-

based swap dealer's tentative net capital requirement and its current amount of tentative net capital. If a security-based swap is informed by the Commission that it is, or has been, in violation of § 240.18a-1 and the security-based swap dealer has not given notice of the capital deficiency under this section, the security-based swap dealer, even if it does not agree that it is, or has been, in violation of § 240.18a-1, must give notice of the claimed deficiency, which notice may specify the security-based swap dealer's reasons for its disagreement.

(2) Every major security-based swap participant for which there is no prudential regulator who fails to maintain a positive tangible net worth pursuant to § 240.18a-2 must give notice of such deficiency that same day in accordance with paragraph (h) of this section. The notice must specify the extent to which the firm has failed to maintain positive tangible net worth. If a major security-based swap participant is informed by the Commission that it is, or has been, in violation of § 240.18a-2 and the major security-based swap participant has not given notice of the capital deficiency under this section, the major security-based swap participant, even if it does not agree that it is, or has been, in violation of § 240.18a-2, must give notice of the claimed deficiency, which notice may specify the major security-based swap participant's reasons for its disagreement.

(b) Every security-based swap dealer or major security-based swap participant for which there is no prudential regulator must send notice promptly (but within 24 hours) after the occurrence of the events specified in paragraphs (b)(1) through (3) or paragraph (b)(4) of this section, as applicable, in accordance with paragraph (h) of this section:

(1) If a computation made by a security-based swap dealer pursuant to § 240.18a-1 shows that its total net capital is less than 120 percent of the security-based swap dealer's required minimum net capital;

(2) If a computation made by a security-based swap dealer authorized by the Commission to compute net capital pursuant to § 240.18a-1(d) shows that its total tentative net capital is less than 120 percent of the security-based swap dealer's required minimum tentative net capital;

(3) If the level of tangible net worth of a major security-based swap participant falls below \$20 million;
and

(4) The occurrence of the fourth and each subsequent backtesting exception under § 240.18a-1(d)(9) during any 250 business day measurement period.

(c) Every security-based swap dealer that files a notice of adjustment of its reported capital category with the Federal Reserve Board, the Office of the Comptroller of the Currency or the Federal Deposit Insurance Corporation must give notice of this fact that same day by transmitting a copy notice of the adjustment of reported capital category in accordance with paragraph (h) of this section.

(d) Every security-based swap dealer or major security-based swap participant that fails to make and keep current the books and records required by § 240.18a-5 or § 240.17a-3, as applicable, must give notice of this fact that same day in accordance with paragraph (h) of this section, specifying the books and records which have not been made or which are not current. The security-based swap dealer or major security-based swap participant must also transmit a report in accordance with paragraph (h) of this section within 48 hours of the notice stating what the security-based swap dealer or major security-based swap participant has done or is doing to correct the situation.

(e) Whenever any security-based swap dealer for which there is no prudential regulator discovers, or is notified by an independent public accountant under § 240.18a-7(g), of the existence of any material weakness, as defined in § 240.18a-7(c)(3)(iii), the security-based swap dealer must:

(1) Give notice, in accordance with paragraph (h) of this section, of the material weakness within 24 hours of the discovery or notification of the material weakness; and

(2) Transmit a report in accordance with paragraph (h) of this section, within 48 hours of the notice stating what the security-based swap dealer has done or is doing to correct the situation.

(f) [Reserved]

(g) If a security-based swap dealer fails to make in its special reserve account for the exclusive benefit of security-based swap customers a deposit, as required by § 240.18a-4(c), the security-based swap dealer must give immediate notice in writing in accordance with paragraph (h) of this section.

(h) Every notice or report required to be given or transmitted by this section must be given or transmitted to the principal office of the Commission in Washington, DC and the regional office of the Commission for the region in which the security-based swap dealer or major security-based swap participant has its principal place of business, or to an email address provided on the Commission's website, and to the Commodity Futures Trading Commission (CFTC) if the security-based swap dealer or major security-based swap participant is registered as a futures commission merchant with the CFTC. The report required by paragraph (d) or (e)(2) of this section may be transmitted by overnight delivery.

15. Section 240.18a-9 is added to read as follows:

§ 240.18a-9 Quarterly security counts to be made by certain security-based swap dealers.

This section applies to a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10) that does not have a prudential regulator and that is not also a broker or dealer, including an *OTC derivatives dealer* as that term is defined in § 240.3b-12, registered pursuant to section 15 of the Act (15 U.S.C. 78o). Section 240.17a-13 (rather than this section) applies to the following entities (if not exempt under the provisions of § 240.17a-13): a member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange; a broker or dealer who transacts a business in securities through the medium of a member of a national securities exchange; a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; a security-based swap dealer registered pursuant to section 15F of the Act that is also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; and a major security-based swap participant that is also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act.

(a) Any security-based swap dealer that is subject to the provisions of this section must at least once in each calendar quarter-year:

(1) Physically examine and count all securities held including securities that are the subjects of repurchase or reverse repurchase agreements;

(2) Account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to its control or direction but not in its physical possession by examination and comparison of the supporting detailed records with the appropriate ledger control accounts;

(3) Verify all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to its control or direction but not in its physical possession, where such securities have been in said status for longer than thirty days;

(4) Compare the results of the count and verification with its records; and

(5) Record on the books and records of the security-based swap dealer all unresolved differences setting forth the security involved and date of comparison in a security count difference account no later than 7 business days after the date of each required quarterly security examination, count, and verification in accordance with the requirements provided in paragraph (b) of this section. *Provided, however,* that no examination, count, verification, and comparison for the purpose of this section is within 2 months of or more than 4 months following a prior examination, count, verification, and comparison made under this paragraph (a)(5).

(b) The examination, count, verification, and comparison may be made either as of a date certain or on a cyclical basis covering the entire list of securities. In either case the recordation must be effected within 7 business days subsequent to the examination, count, verification, and comparison of a particular security. In the event that an examination, count, verification, and comparison is made on a cyclical basis, it may not extend over more than 1 calendar quarter-year, and no security may be examined, counted, verified, or compared for the purpose of this section within 2 months of or more than 4 months after a prior examination, count, verification, and comparison.

(c) The examination, count, verification, and comparison must be made or supervised by persons whose regular duties do not require them to have direct responsibility for the proper care and protection of the securities or the making or preservation of the subject records.

16. Section 240.18a-10 is amended by revising paragraphs (a) introductory text and (b)(1) through (3), adding paragraphs (b)(4) and (5), and revising paragraphs (c) introductory text, (d)(2)(ii) introductory text, and (e) to read as follows:

§ 240.18a-10 Alternative compliance mechanism for security-based swap dealers that are registered as swap dealers and have limited security-based swap activities.

(a) A security-based swap dealer may comply with capital, margin, segregation, recordkeeping, and reporting requirements of the Commodity Exchange Act and chapter I of this title applicable to swap dealers in lieu of complying with §§ 240.18a-1 and 240.18a-3 through 240.18a-9 if:

* * * * *

(b) * * *

(1) Comply with capital, margin, segregation, recordkeeping, and reporting requirements of the Commodity Exchange Act and chapter I of this title applicable to swap dealers and treat security-based swaps or collateral related to security-based swaps as swaps or collateral related to swaps, as applicable, pursuant to those requirements to the extent the requirements do not specifically address security-based swaps or collateral related to security-based swaps;

(2) Disclose in writing to each counterparty to a security-based swap before entering into the first transaction with the counterparty after the date the security-based swap dealer begins operating under this section that the security-based swap dealer is operating under this section and is therefore complying with the applicable capital, margin, segregation, recordkeeping, and reporting requirements of the Commodity Exchange Act and the rules promulgated by the Commodity Futures Trading Commission thereunder in lieu of complying with the capital, margin, segregation, recordkeeping, and reporting requirements promulgated by the Commission in §§ 240.18a-1 and 240.18a-3 through 240.18a-9;

(3) Immediately notify the Commission and the Commodity Futures Trading Commission in writing if the security-based swap dealer fails to meet a condition specified in paragraph (a) of this section;

(4) Simultaneously notify the Commission if the security-based swap dealer is required to send a notice concerning its capital, books and records, liquidity, margin operations, or segregation operations to the Commodity Futures Trading Commission by transmitting to the Commission a copy of the notice being sent to the Commodity Futures Trading Commission; and

(5) Furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the security-based swap dealer that are required to be preserved under the Commodity Exchange Act and chapter I of this title applicable to swap dealers, or any other records of the security-based swap dealer subject to examination pursuant to section 15F of the Act (15 U.S.C. 78o-10) that are requested by a representative of the Commission.

(c) A security-based swap dealer that fails to meet one or more of the conditions specified in paragraph (a) of this section must begin complying with §§ 240.18a-1 and 240.18a-3 through 240.18a-9 no later than:

* * * * *

(d) * * *

(2) * * *

(ii) Continue to comply with §§ 240.18a-1 and 240.18a-3 through 240.18a-9 for at least:

* * * * *

(e) The notices required by this section must be sent by facsimile transmission to the principal office of the Commission and the regional office of the Commission for the region in which the security-based swap dealer has its principal place of business or to an email address provided on the Commission's website, and to the principal office of the Commodity Futures Trading Commission in a manner consistent with the notification requirements of the Commodity Futures Trading Commission. The notice must include a brief summary of the reason for the notice and the contact information of an individual who can provide further information about the matter that is the subject of the notice.

* * * * *

PART 249 — FORMS, SECURITIES EXCHANGE ACT OF 1934

17. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112-106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

18. Subpart G is amended by revising the heading to read as follows:

Subpart G — Forms for Reports To Be Made by Certain Exchange Members, Brokers, Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants

* * * * *

19. Section 249.617 is revised to read as follows:

§ 249.617 Form X-17A-5, information required of certain brokers, dealers, security-based swap dealers, and major security-based swap participants pursuant to sections 15F and 17 of the Securities Exchange Act of 1934 and §§ 240.17a-5, 240.17a-10, 240.17a-11, 240.17a-12, and 240.18a-7 of this chapter, as applicable.

Appropriate parts of Form X-17A-5, as applicable, shall be used by brokers, dealers, security-based swap dealers, and major security-based swap participants required to file reports under §§ 240.17a-5, 240.17a-10, 240.17a-11, 240.17a-12, and 240.18a-7 of this chapter, as applicable.

20. Part III of Form X-17A-5 (referenced in § 249.617 of this chapter) is revised to read as follows:

Note: The text of Part III of Form X-17A-5 does not and this amendment will not appear in the Code of Federal Regulations.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ANNUAL REPORTS
FORM X-17A-5
PART III

OMB APPROVAL
OMB Number: Expires: Estimated average burden hours per response:
SEC FILE NUMBER

FACING PAGE

Information Required Pursuant to Rules 17a-5, 17a-12, and 18a-7 under the Securities Exchange Act of 1934

FILING FOR THE PERIOD BEGINNING _____ AND ENDING _____
MM/DD/YY MM/DD/YY

A. REGISTRANT IDENTIFICATION

NAME OF FIRM: _____

TYPE OF REGISTRANT (check all applicable boxes):

- Broker-dealer Security-based swap dealer Major security-based swap participant
 Check here if respondent is also an OTC derivatives dealer

ADDRESS OF PRINCIPAL PLACE OF BUSINESS: (Do not use a P.O. box no.)

(No. and Street)

(City) (State) (Zip Code)

PERSON TO CONTACT WITH REGARD TO THIS FILING

(Name) (Area Code – Telephone Number) (Email Address)

B. ACCOUNTANT IDENTIFICATION

INDEPENDENT PUBLIC ACCOUNTANT whose reports are contained in this filing*

(Name – if individual, state last, first, and middle name)

(Address) (City) (State) (Zip Code)

(Date of Registration with PCAOB)(if applicable) (PCAOB Registration Number, if applicable)

FOR OFFICIAL USE ONLY

* Claims for exemption from the requirement that the annual reports be covered by the reports of an independent public accountant must be supported by a statement of facts and circumstances relied on as the basis of the exemption. See 17 CFR 240.17a-5(e)(1)(ii), if applicable.

Persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

OATH OR AFFIRMATION

I, _____, swear (or affirm) that, to the best of my knowledge and belief, the financial report pertaining to the firm of _____, as of _____, 2_____, is true and correct. I further swear (or affirm) that neither the company nor any partner, officer, director, or equivalent person, as the case may be, has any proprietary interest in any account classified solely as that of a customer.

Signature: _____
Title: _____

Notary Public

This filing contains (check all applicable boxes):**

- (a) Statement of financial condition.
- (b) Notes to consolidated statement of financial condition.
- (c) Statement of income (loss) or, if there is other comprehensive income in the period(s) presented, a statement of comprehensive income (as defined in § 210.1-02 of Regulation S-X).
- (d) Statement of cash flows.
- (e) Statement of changes in stockholders' or partners' or sole proprietor's equity.
- (f) Statement of changes in liabilities subordinated to claims of creditors.
- (g) Notes to consolidated financial statements.
- (h) Computation of net capital under 17 CFR 240.15c3-1 or 17 CFR 240.18a-1, as applicable.
- (i) Computation of tangible net worth under 17 CFR 240.18a-2.
- (j) Computation for determination of customer reserve requirements pursuant to Exhibit A to 17 CFR 240.15c3-3.
- (k) Computation for determination of security-based swap reserve requirements pursuant to Exhibit B to 17 CFR 240.15c3-3 or Exhibit A to 17 CFR 240.18a-4, as applicable.
- (l) Computation for Determination of PAB Requirements under Exhibit A to § 240.15c3-3.
- (m) Information relating to possession or control requirements for customers under 17 CFR 240.15c3-3.
- (n) Information relating to possession or control requirements for security-based swap customers under 17 CFR 240.15c3-3(p)(2) or 17 CFR 240.18a-4, as applicable.
- (o) Reconciliations, including appropriate explanations, of the FOCUS Report with computation of net capital or tangible net worth under 17 CFR 240.15c3-1, 17 CFR 240.18a-1, or 17 CFR 240.18a-2, as applicable, and the reserve requirements under 17 CFR 240.15c3-3 or 17 CFR 240.18a-4, as applicable, if material differences exist, or a statement that no material differences exist.
- (p) Summary of financial data for subsidiaries not consolidated in the statement of financial condition.
- (q) Oath or affirmation in accordance with 17 CFR 240.17a-5, 17 CFR 240.17a-12, or 17 CFR 240.18a-7, as applicable.
- (r) Compliance report in accordance with 17 CFR 240.17a-5 or 17 CFR 240.18a-7, as applicable.
- (s) Exemption report in accordance with 17 CFR 240.17a-5 or 17 CFR 240.18a-7, as applicable.
- (t) Independent public accountant's report based on an examination of the statement of financial condition.
- (u) Independent public accountant's report based on an examination of the financial report or financial statements under 17 CFR 240.17a-5, 17 CFR 240.18a-7, or 17 CFR 240.17a-12, as applicable.
- (v) Independent public accountant's report based on an examination of certain statements in the compliance report under 17 CFR 240.17a-5 or 17 CFR 240.18a-7, as applicable.
- (w) Independent public accountant's report based on a review of the exemption report under 17 CFR 240.17a-5 or 17 CFR 240.18a-7, as applicable.
- (x) Supplemental reports on applying agreed-upon procedures, in accordance with 17 CFR 240.15c3-1e or 17 CFR 240.17a-12, as applicable.
- (y) Report describing any material inadequacies found to exist or found to have existed since the date of the previous audit, or a statement that no material inadequacies exist, under 17 CFR 240.17a-12(k).
- (z) Other: _____

****To request confidential treatment of certain portions of this filing, see 17 CFR 240.17a-5(e)(3) or 17 CFR 240.18a-7(d)(2), as applicable.**

21. Part II of Form X-17A-5 and the instructions thereto (referenced in § 249.617 of this chapter) are revised to read as follows:

Note: The text of Part II of Form X-17A-5 and the instructions thereto do not and this amendment will not appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
 FOCUS REPORT (FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT)
 Part II 11

OMB APPROVAL	
OMB Number: 3235-0123	
Expires:	
Estimated average burden hours per response:	

(Please read instructions before preparing Form)

This report is being filed by a/an:

- 1) Broker-dealer not registered as an SBSD or MSBSP (stand-alone broker-dealer) 12000
 - 2) Broker-dealer registered as an SBSD (broker-dealer SBSD)..... 12001
 - 3) Broker-dealer registered as an MSBSP (broker-dealer MSBSP) 12002
 - 4) SBSD without a prudential regulator and not registered as a broker-dealer (stand-alone SBSD)..... 12003
 - 5) MSBSP without a prudential regulator and not registered as a broker-dealer (stand-alone MSBSP) 12004
- Check here if respondent is an OTC derivatives dealer 12005

This report is being filed by a: Firm authorized to use models 12006 U.S. person 12007 Non- U.S. person 12008

This report is being filed pursuant to (check applicable block(s)):

- 1) Rule 17a-5(a) 16
- 2) Rule 17a-5(b) 17
- 3) Special request by DEA or the Commission..... 19
- 4) Rule 18a-7..... 99
- 5) Other (explain:)..... 26

NAME OF REPORTING ENTITY	SEC FILE NO.
_____ 13	_____ 14
ADDRESS OF PRINCIPAL PLACE OF BUSINESS (Do not use P.O. Box No.)	FIRM ID NO.
_____ 20	_____ 15
(No. and Street)	FOR PERIOD BEGINNING (MM/DD/YY)
(City) 21 (State/Province) 22 (Zip Code) 23	AND ENDING (MM/DD/YY) 24
(Country) 12009	_____ 25

NAME OF PERSON TO CONTACT IN REGARD TO THIS REPORT	EMAIL ADDRESS	(AREA CODE) TELEPHONE NO.
_____ 30	_____ 12010	_____ 31
NAME(S) OF SUBSIDIARIES OR AFFILIATES CONSOLIDATED IN THIS REPORT	OFFICIAL USE	
_____ 32	_____ 33	
_____ 34	_____ 35	
_____ 36	_____ 37	
_____ 38	_____ 39	

Is this report consolidated or unconsolidated? Consolidated 198 Unconsolidated 199
 Does respondent carry its own customer or security-based swap customer accounts? Yes 40 No 41
 Check here if respondent is filing an audited report 42

EXECUTION: The registrant submitting this Form and its attachments and the person(s) by whom it is executed represent hereby that all information contained therein is true, correct and complete. It is understood that all required items, statements, and schedules are considered integral parts of this Form and that the submission of any amendment represents that all unamended items, statements, and schedules remain true, correct and complete as previously submitted.

Dated the _____ day of _____, 2_____.

Signatures of:	Names of:
1) _____	_____ 12011
Principal Executive Officer or Comparable Officer	Principal Executive Officer or Comparable Officer
2) _____	_____ 12012
Principal Financial Officer or Comparable Officer	Principal Financial Officer or Comparable Officer
3) _____	_____ 12013
Principal Operations Officer or Comparable Officer	Principal Operations Officer or Comparable Officer

ATTENTION: Intentional misstatements and/or omissions of facts constitute federal criminal violations. (See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).)

Name of Firm: _____
 As of: _____

Persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

STATEMENT OF FINANCIAL CONDITION

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

ASSETS

<u>Assets</u>	<u>Allowable</u>	<u>Non-Allowable</u>	<u>Total</u>
1. Cash.....	\$ 200	\$ 12014	\$ 750
2. Cash segregated in compliance with federal and other regulations.....	\$ 210		\$ 760
3. Receivables from brokers/dealers and clearing organizations			
A. Failed to deliver			
1. Includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a.....	\$ 220		
2. Other.....	\$ 230		\$ 770
B. Securities borrowed			
1. Includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a.....	\$ 240		
2. Other.....	\$ 250		\$ 780
C. Omnibus accounts			
1. Includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a.....	\$ 260		
2. Other.....	\$ 270		\$ 790
D. Clearing organizations			
1. Includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a, or the CEA.....	\$ 280		
2. Other.....	\$ 290		\$ 800
E. Other.....	\$ 300	\$ 550	\$ 810
4. Receivables from customers			
A. Securities accounts			
1. Cash and fully secured accounts.....	\$ 310		
2. Partly secured accounts.....	\$ 320	\$ 560	
3. Unsecured accounts.....		\$ 570	
B. Commodity accounts.....	\$ 330	\$ 580	
C. Allowance for doubtful accounts.....	\$ () 335	\$ () 590	\$ 820
5. Receivables from non-customers			
A. Cash and fully secured accounts.....	\$ 340		
B. Partly secured and unsecured accounts.....	\$ 350	\$ 600	\$ 830
6. Excess cash collateral pledged on derivative transactions.....	\$ 12015	\$ 12016	\$ 12017
7. Securities purchased under agreements to resell.....	\$ 360	\$ 605	\$ 840
8. Trade date receivable.....	\$ 292		\$ 802
9. Total net securities, commodities, and swaps positions.....	\$ 12019	\$ 12022	\$ 12024
10. Securities borrowed under subordination agreements and partners' individual and capital securities accounts, at market value			
A. Exempted securities.....	\$ 150		
B. Other.....	\$ 160	\$ 460	\$ 630
11. Secured demand notes – market value of collateral			
A. Exempted securities.....	\$ 170		
B. Other.....	\$ 180	\$ 470	\$ 640

Name of Firm: _____
As of: _____

STATEMENT OF FINANCIAL CONDITION

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

<u>Assets</u>	<u>Allowable</u>	<u>Non-Allowable</u>	<u>Total</u>
12. Memberships in exchanges			
A. Owned, at market value..... \$ _____	190		
B. Owned at cost.....		\$ _____ 650	
C. Contributed for use of company, at market value.....		\$ _____ 660	\$ _____ 900
13. Investment in and receivables from affiliates, subsidiaries and associated partnerships.....	\$ _____ 480	\$ _____ 670	\$ _____ 910
14. Property, furniture, equipment, leasehold improvements and rights under lease agreements			
At cost (net of accumulated depreciation and amortization).....	\$ _____ 490	\$ _____ 680	\$ _____ 920
15. Other assets			
A. Dividends and interest receivable.....	\$ _____ 500	\$ _____ 690	
B. Free shipments.....	\$ _____ 510	\$ _____ 700	
C. Loans and advances.....	\$ _____ 520	\$ _____ 710	
D. Miscellaneous.....	\$ _____ 530	\$ _____ 720	
E. Collateral accepted under ASC 860.....	\$ _____ 536		
F. SPE Assets.....	\$ _____ 537		\$ _____ 930
16. TOTAL ASSETS.....	\$ _____ 540	\$ _____ 740	\$ _____ 940

Note: Stand-alone MSBSPs should only complete the Allowable and Total columns.

Name of Firm: _____
As of: _____

STATEMENT OF FINANCIAL CONDITION

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Stand-Alone SBSB
Broker-Dealer SBSB
Stand-Alone MSBSP
Broker-Dealer MSBSP

LIABILITIES AND OWNERSHIP EQUITY

<u>Liabilities</u>	<u>A.I. Liabilities</u>	<u>Non-A.I. Liabilities</u>	<u>Total</u>
17. Bank loans payable			
A. Includible in segregation requirement under			
17 CFR 240.15c3-3 and its appendices or			
17 CFR 240.18a-4 and 18a-4a, or the CEA	\$ 1030	\$ 1240	\$ 1460
B. Other.....	\$ 1040	\$ 1250	\$ 1470
18. Securities sold under repurchase agreements		\$ 1260	\$ 1480
19. Payable to brokers/dealers and clearing organizations			
A. Failed to receive			
1. Includible in segregation requirement under			
17 CFR 240.15c3-3 and its appendices or			
17 CFR 240.18a-4 and 18a-4a.....	\$ 1050	\$ 1270	\$ 1490
2. Other	\$ 1060	\$ 1280	\$ 1500
B. Securities loaned			
1. Includible in segregation requirement under			
17 CFR 240.15c3-3 and its appendices or			
17 CFR 240.18a-4 and 18a-4a.....	\$ 1070		\$ 1510
2. Other	\$ 1080	\$ 1290	\$ 1520
C. Omnibus accounts			
1. Includible in segregation requirement under			
17 CFR 240.15c3-3 and its appendices or			
17 CFR 240.18a-4 and 18a-4a.....	\$ 1090		\$ 1530
2. Other	\$ 1095	\$ 1300	\$ 1540
D. Clearing organizations			
1. Includible in segregation requirement under			
17 CFR 240.15c3-3 and its appendices or			
17 CFR 240.18a-4 and 18a-4a, or the CEA.....	\$ 1100		\$ 1550
2. Other	\$ 1105	\$ 1310	\$ 1560
E. Other.....	\$ 1110	\$ 1320	\$ 1570
20. Payable to customers			
A. Securities accounts – including free credits of.....	\$ 950		\$ 1580
B. Commodities accounts	\$ 1130	\$ 1330	\$ 1590
21. Payable to non-customers			
A. Securities accounts	\$ 1140	\$ 1340	\$ 1600
B. Commodities accounts	\$ 1150	\$ 1350	\$ 1610
22. Excess cash collateral received on derivative transactions.....	\$ 12025	\$ 12026	\$ 12027
23. Trade date payable.....	\$ 12031	\$ 12037	\$ 1562
24. Total net securities, commodities, and swaps positions.....	\$ 12032	\$ 12038	\$ 12044
25. Accounts payable and accrued liabilities and expenses			
A. Drafts payable.....	\$ 1160		\$ 1630
B. Accounts payable	\$ 1170		\$ 1640
C. Income taxes payable.....	\$ 1180		\$ 1650
D. Deferred income taxes		\$ 1370	\$ 1660
E. Accrued expenses and other liabilities	\$ 1190		\$ 1670
F. Other.....	\$ 1200	\$ 1380	\$ 1680
G. Obligation to return securities	\$ 12033	\$ 1386	\$ 1686
H. SPE liabilities.....	\$ 12045	\$ 1387	\$ 1687

Name of Firm: _____

As of: _____

STATEMENT OF FINANCIAL CONDITION

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Stand-Alone SBSB
Broker-Dealer SBSB
Stand-Alone MSBSP
Broker-Dealer MSBSP

<u>Liabilities</u>	<u>A.I. Liabilities</u>	<u>Non-A.I. Liabilities</u>	<u>Total</u>
26. Notes and mortgages payable			
A. Unsecured.....	\$ 1210		\$ 1690
B. Secured.....	\$ 1211	\$ 1390	\$ 1700
27. Liabilities subordinated to claims of creditors			
A. Cash borrowings.....		\$ 1400	\$ 1710
1. From outsiders	\$ 970		
2. Includes equity subordination (Rule 15c3-1(d) or Rule 18a-1(g)) of.....	\$ 980		
B. Securities borrowings, at market value		\$ 1410	\$ 1720
1. From outsiders	\$ 990		
C. Pursuant to secured demand note collateral agreements		\$ 1420	\$ 1730
1. From outsiders	\$ 1000		
2. Includes equity subordination (Rule 15c3-1(d) or Rule 18a-1(g)) of.....	\$ 1010		
D. Exchange memberships contributed for use of company, at market value.....		\$ 1430	\$ 1740
E. Accounts and other borrowings not qualified for net capital purposes	\$ 1220	\$ 1440	\$ 1750
28. TOTAL LIABILITIES	\$ 1230	\$ 1450	\$ 1760
Ownership Equity			
29. Sole proprietorship			\$ 1770
30. Partnership and limited liability company – including limited partners/members	\$ 1020		\$ 1780
31. Corporation			
A. Preferred stock		\$ 1791	
B. Common stock.....		\$ 1792	
C. Additional paid-in capital		\$ 1793	
D. Retained earnings		\$ 1794	
E. Accumulated other comprehensive income		\$ 1797	
F. Total.....			\$ 1795
G. Less capital stock in treasury.....			\$(1796)
32. TOTAL OWNERSHIP EQUITY (sum of Line Items 1770, 1780, 1795, and 1796).....			\$ 1800
33. TOTAL LIABILITIES AND OWNERSHIP EQUITY (sum of Line Items 1760 and 1800)			\$ 1810

Name of Firm: _____
As of: _____

COMPUTATION OF NET CAPITAL (FILER AUTHORIZED TO USE MODELS)

Items on this page to be reported by a: Stand-Alone Broker-Dealer (Authorized to use models)
Stand-Alone SBSB (Authorized to use models)
Broker-Dealer SBSB (Authorized to use models)
Broker-Dealer MSBSP (Authorized to use models)

Computation of Net Capital

1. Total ownership equity from Item 1800		\$		3480	
2. Deduct ownership equity not allowable for net capital .....		\$	(	3490)
3. Total ownership equity qualified for net capital		\$		3500	
4. Add:					
A. Liabilities subordinated to claims of creditors allowable in computation of net capital		\$		3520	
B. Other (deductions) or allowable credits (list)		\$		3525	
5. Total capital and allowable subordinated liabilities		\$		3530	
6. Deductions and/or charges					
A. Total nonallowable assets from Statement of Financial Condition		\$		3540	
1. Additional charges for customers' and non-customers' security accounts		\$		3550	
2. Additional charges for customers' and non-customers' commodity accounts		\$		3560	
3. Additional charges for customers' and non-customers' security-based swap accounts		\$		12047	
4. Additional charges for customers' and non-customers' swap accounts		\$		12048	
B. Aged fail-to-deliver		\$		3570	
1. Number of items				3450	
C. Aged short security differences – less					
reserve of			3460	\$	3580
number of items			3470		
D. Secured demand note deficiency		\$		3590	
E. Commodity futures contracts and spot commodities – proprietary capital charges		\$		3600	
F. Other deductions and/or charges		\$		3610	
G. Deductions for accounts carried under Rules 15c3-1(a)(6) and (c)(2)(x)		\$		3615	
H. Total deductions and/or charges (sum of Lines 6A-6G) .....		\$	(	3620)
7. Other additions and/or allowable credits (list)		\$		3630	
8. Tentative net capital		\$		3640	
9. Market risk exposure – for VaR firms (sum of Lines 9E, 9F, 9G, and 9H)		\$		3677	
A. Total value at risk (sum of Lines 9A1-9A5)		\$		3634	
Value at risk components					
1. Fixed income VaR		\$		3636	
2. Currency VaR		\$		3637	
3. Commodities VaR		\$		3638	
4. Equities VaR		\$		3639	
5. Credit derivatives VaR		\$		3641	
B. Diversification benefit .....		\$	(	3642)
C. Total diversified VaR (sum of Lines 9A and 9B)		\$		3643	
D. Multiplication factor		\$		3645	
E. Subtotal (Line 9C multiplied by Line 9D)		\$		3655	
F. Deduction for specific risk, unless included in Lines 9A-9E above		\$		3646	

Name of Firm: _____
As of: _____

COMPUTATION OF NET CAPITAL (FILER AUTHORIZED TO USE MODELS)

Items on this page to be reported by a: Stand-Alone Broker-Dealer (Authorized to use models)
Stand-Alone SBSB (Authorized to use models)
Broker-Dealer SBSB (Authorized to use models)
Broker-Dealer MSBSP (Authorized to use models)

G. Risk deduction using scenario analysis (sum of Lines 9G1-9G5)	\$	3647	
1. Fixed income	\$	3648	
2. Currency	\$	3649	
3. Commodities	\$	3651	
4. Equities	\$	3652	
5. Credit derivatives	\$	3653	
H. Residual marketable securities (see Rule 15c3-1(c)(2)(vi) or 18a-1(c)(1)(vii), as applicable)	\$	3665	
10. Market risk exposure – for Basel 2.5 firms (sum of Lines 10E, 10H, 10I, 10J, 10K, 10L, 10N, and 10O)	\$		12776
A. Total value at risk (sum of Lines 10A1-10A5)	\$	12762	
Value at risk components			
1. Fixed income VaR	\$	12758	
2. Currency VaR	\$	12759	
3. Commodities VaR	\$	12760	
4. Equities VaR	\$	12761	
5. Credit derivatives VaR	\$	12029	
B. Diversification benefit	\$ (		12763
C. Total diversified VaR (sum of Line 10A and 10B)	\$	12030	
D. Multiplication factor	\$	12764	
E. Subtotal (Line 10C is multiplied by Line 10D)	\$	12765	
F. Total stressed VaR (SVaR)	\$	12766	
G. Multiplication factor	\$	12767	
H. Subtotal (Line 10F multiplied by Line 10G)	\$	12768	
I. Incremental risk charge (IRC)	\$ (		12769
J. Comprehensive risk measure (CRM)	\$	12770	
K. Specific risk – standard specific market risk (SSMR)	\$	12771	
L. Specific risk – securitization (SFA / SSFA)	\$	12772	
M. Alternative method for equities under Appendix A to Rule 15c3-1 or Rule 18a-1a, as applicable	\$	12773	
N. Residual positions	\$	12774	
O. Other	\$	12775	
11. Credit risk exposure for certain counterparties (see Appendix E to Rule 15c3-1 or Rule 18a-1(e)(2), as applicable)			\$
A. Counterparty exposure charge (add Lines 11A1 and 11A2)			3676
1. Net replacement value default, bankruptcy	\$	12049	
2. Credit equivalent amount exposure to the counterparty multiplied by the credit-risk weight of the counterparty multiplied by 8%	\$	12050	
B. Concentration charge			\$
1. Credit risk weight ≤20%	\$	3656	
2. Credit risk weight >20% and ≤50%	\$	3657	
3. Credit risk weight >50%	\$	3658	
C. Portfolio concentration charge			\$
12. Total credit risk exposure (add Lines 11A, 11B and 11C)			\$
13. Net capital (for VaR firms, subtract Lines 9 and 12 from Line 8) (for Basel 2.5 firms, subtract Lines 10 and 12 from Line 8)			\$
			3688
			3750

Name of Firm: _____
As of: _____

COMPUTATION OF NET CAPITAL (FILER NOT AUTHORIZED TO USE MODELS)

Items on this page to be reported by a: Stand-Alone Broker-Dealer (Not Authorized to use models)
Stand-Alone SBSB (Not Authorized to use models)
Broker-Dealer SBSB (Not Authorized to use models)
Broker-Dealer MSBSP (Not Authorized to use models)

Computation of Net Capital

1. Total ownership equity from Item 1800	\$		3480
2. Deduct ownership equity not allowable for net capital .....	\$ (		3490)
3. Total ownership equity qualified for net capital	\$		3500
4. Add:			
A. Liabilities subordinated to claims of creditors allowable in computation of net capital	\$		3520
B. Other (deductions) or allowable credits (list)	\$		3525
5. Total capital and allowable subordinated liabilities	\$		3530
6. Deductions and/or charges			
A. Total nonallowable assets from Statement of Financial Condition	\$		3540
1. Additional charges for customers' and non-customers' security accounts	\$		3550
2. Additional charges for customers' and non-customers' commodity accounts	\$		3560
3. Additional charges for customers' and non-customers' security-based swap accounts	\$		12051
4. Additional charges for customers' and non-customers' swap accounts	\$		12052
B. Aged fail-to-deliver	\$		3570
1. Number of items		3450	
C. Aged short security differences-less reserve of	\$	3460	3580
1. Number of items		3470	
D. Secured demand note deficiency	\$		3590
E. Commodity futures contracts and spot commodities – proprietary capital charges	\$		3600
F. Other deductions and/or charges	\$		3610
G. Deductions for accounts carried under Rule 15c3-1(a)(6) and (c)(2)(x)	\$		3615
H. Total deductions and/or charges .....	\$ (		3620)
7. Other additions and/or allowable credits	\$		3630
8. Tentative net capital (net capital before haircuts)	\$		3640
9. Haircuts on securities other than security-based swaps			
A. Contractual securities commitments	\$		3660
B. Subordinated securities borrowings	\$		3670
C. Trading and investment securities			
1. Bankers' acceptances, certificates of deposit, commercial paper, and money market instruments	\$		3680
2. U.S. and Canadian government obligations	\$		3690
3. State and municipal government obligations	\$		3700
4. Corporate obligations	\$		3710
5. Stocks and warrants	\$		3720
6. Options	\$		3730
7. Arbitrage	\$		3732
8. Risk-based haircuts computed under 17 CFR 240.15c3-1a or 17 CFR 240.18a-1a	\$		12028
9. Other securities	\$		3734
D. Undue concentration	\$		3650
E. Other (List: _____)	\$		3736
10. Haircuts on security-based swaps	\$		12053
11. Haircuts on swaps	\$		12054
12. Total haircuts (sum of Lines 9A-9E, 10, and 11)	\$		3740
13. Net capital (Line 8 minus Line 12)	\$		3750

Name of Firm: _____

As of: _____

COMPUTATION OF MINIMUM REGULATORY CAPITAL REQUIREMENTS

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Broker-Dealer SBSB (other than OTC Derivatives Dealer)
Broker-Dealer MSBSP

Calculation of Excess Tentative Net Capital (If Applicable)

1. Tentative net capital	\$	3640
2. Minimum tentative net capital requirement	\$	12059
3. Excess tentative net capital (difference between Lines 1 and 2).....	\$	12056
4. Tentative net capital in excess of 120% of minimum tentative net capital requirement reported on Line 2	\$	12057

Calculation of Minimum Net Capital Requirement

5. Ratio minimum net capital requirement		
A. 6 2/3% of total aggregate indebtedness (Line Item 3840).....	\$	3756
B. 2% of aggregate debit items as shown in the Formula for Reserve Requirements pursuant to Rule 15c3-3.....	\$	3870
i. Minimum CFTC net capital requirement (if applicable).....	\$	7490
C. Percentage of risk margin amount computed under 17 CFR 240.15c3-1(a)(7)(i) or (a)(10).....	\$	12058
D. For broker-dealers engaged in reverse repurchase agreements, 10% of the amounts in 17 CFR 240.15c3-1(a)(9)(i)-(iii)	\$	12059
E. Minimum ratio requirement (sum of Lines 5A, 5B, 5C, and/or 5D, as applicable).....	\$	12060
6. Fixed-dollar minimum net capital requirement.....	\$	3880
7. Minimum net capital requirement (greater of Lines 5E and 6).....	\$	3760
8. Excess net capital (Item 3750 minus Item 3760).....	\$	3910
9. Net capital and tentative net capital in relation to early warning thresholds		
A. Net capital in excess of 120% of minimum net capital requirement reported on Line 7	\$	12061
B. Net capital in excess of 5% of combined aggregate debit items as shown in the Formula for Reserve Requirements pursuant to Rule 15c3-3	\$	3920

Computation of Aggregate Indebtedness (If Applicable)

10. Total aggregate indebtedness liabilities from Statement of Financial Condition (Item 1760)	\$	3790
11. Add:		
A. Drafts for immediate credit.....	\$	3800
B. Market value of securities borrowed for which no equivalent value is paid or credited	\$	3810
C. Other unrecorded amounts (list).....	\$	3820
D. Total additions (sum of Line Items 3800, 3810, and 3820).....	\$	3830
12. Deduct: Adjustment based on deposits in Special Reserve Bank Accounts (see Rule 15c3-1(c)(1)(vii))	\$	3838
13. Total aggregate indebtedness (sum of Line Items 3790 and 3830).....	\$	3840
14. Percentage of aggregate indebtedness to net capital (Item 3840 divided by Item 3750).....	%	3850
15. Percentage of aggregate indebtedness to net capital <i>after</i> anticipated capital withdrawals (Item 3840 divided by Item 3750 less Item 4880).....	%	3853

Calculation of Other Ratios

16. Percentage of net capital to aggregate debits (Item 3750 divided by Item 4470).....	%	3851
17. Percentage of net capital, <i>after</i> anticipated capital withdrawals, to aggregate debits (Item 3750 less Item 4880, divided by Item 4470).....	\$	3854
18. Percentage of debt to debt-to-equity total, computed in accordance with Rule 15c3-1(d).....	%	3860
19. Options deductions/net capital ratio (1000% test) total deductions exclusive of liquidating equity under Rule 15c3-1(a)(6) and (c)(2)(x) divided by net capital.....	\$	3852

Name of Firm: _____
As of: _____

COMPUTATION OF MINIMUM REGULATORY CAPITAL REQUIREMENTS

Items on this page to be reported by a: Stand-Alone SBSB
SBSB registered as an OTC Derivatives Dealer

Calculation of Excess Tentative Net Capital (If Applicable)

1. Tentative net capital	\$	3640
2. Fixed-dollar minimum tentative net capital requirement	\$	12062
3. Excess tentative net capital (difference between Lines 1 and 2)	\$	12063
4. Tentative net capital in excess of 120% of minimum tentative net capital requirements reported on Line 2	\$	12064

Calculation of Minimum Net Capital Requirement

5. Ratio minimum net capital requirement – Percentage of risk margin amount computed under 17 CFR 240.18a-1(a)(1)	\$	12065
6. Fixed-dollar minimum net capital requirement	\$	3880
7. Minimum net capital requirement (greater of Lines 5 and 6)	\$	3760
8. Excess net capital (Item 3750 minus Item 3760)	\$	3910
9. Net capital in excess of 120% of minimum net capital requirement reported on Line 7 (Line Item 3750 – [Line Item 3760 x 120%])	\$	12066

Name of Firm: _____
As of: _____

COMPUTATION OF TANGIBLE NET WORTH

Items on this page to be reported by a: Stand-Alone MSBSP

1. Total ownership equity (from Item 1800).....	\$	1800
2. Goodwill and other intangible assets	\$	12067
3. Tangible net worth (Line 1 minus Line 2).....	\$	12068

Name of Firm: _____

As of: _____

STATEMENT OF INCOME (LOSS) OR STATEMENT OF COMPREHENSIVE INCOME, AS APPLICABLE

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

REVENUE

1. Commissions		
A. Commissions on transactions in listed equity securities executed on an exchange	\$	3935
B. Commissions on transactions in exchange listed equity securities executed over-the-counter	\$	3937
C. Commissions on listed option transactions	\$	3938
D. All other securities commissions	\$	3939
E. Total securities commissions	\$	3940
2. Gains or losses on firm securities trading accounts		
A. From market making in over-the-counter equity securities	\$	3941
1. Includes gains or losses on OTC market making in exchange-listed equity securities	\$	3943
B. From trading in debt securities	\$	3944
C. From market making in options on a national securities exchange	\$	3945
D. From all other trading	\$	3949
E. Total gains or losses	\$	3950
3. Gains or losses from derivatives trading	\$	3928
4. Gains or losses on firm securities investment accounts		
A. Includes realized gains or losses	\$	4235
B. Includes unrealized gains or losses	\$	4236
C. Total realized and unrealized gains or losses	\$	3952
5. Gains or losses from underwriting and selling groups	\$	3955
A. Includes underwriting income from corporate equity securities	\$	4237
6. Margin interest	\$	3960
7. Revenue from sale of investment company shares	\$	3970
8. Fees for account supervision, investment advisory and administrative services	\$	3975
9. Revenue from research services	\$	3980
10. Gains or losses on commodities	\$	3990
11. Other revenue related to securities business	\$	3985
12. Other revenue	\$	3995
13. Total revenue	\$	4030

EXPENSES

14. Registered representatives' compensation	\$	4110
15. Clerical and administrative employees' expenses	\$	4040
16. Salaries and other employment costs for general partners, and voting stockholder officers	\$	4120
A. Includes interest credited to general and limited partners' capital accounts	\$	4130
17. Floor brokerage paid to certain brokers (see definition)	\$	4055
18. Commissions and clearance paid to all other brokers (see definition)	\$	4145
19. Clearance paid to non-brokers (see definition)	\$	4135
20. Communications	\$	4060
21. Occupancy and equipment costs	\$	4080
22. Promotional costs	\$	4150
23. Interest expense	\$	4075
A. Includes interest on accounts subject to subordination agreements	\$	4070
24. Losses in error account and bad debts	\$	4170
25. Data processing costs (including service bureau service charges)	\$	4186
26. Non-recurring charges	\$	4190

Name of Firm: _____

As of: _____

STATEMENT OF INCOME (LOSS) OR STATEMENT OF COMPREHENSIVE INCOME, AS APPLICABLE

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

27. Regulatory fees and expenses.....	\$	4195
28. Other expenses.....	\$	4100
29. Total expenses.....	\$	4200

NET INCOME/COMPREHENSIVE INCOME

30. Income or loss before federal income taxes and items below (Line 13 less Line 29).....	\$	4210
31. Provision for federal income taxes (for parent only).....	\$	4220
32. Equity in earnings or losses of unconsolidated subsidiaries not included above.....	\$	4222
A. After federal income taxes of.....	\$	4238
33. Net income or loss after federal income taxes.....	\$	4230
34. Other comprehensive income (loss).....	\$	4226
A. After federal income taxes of.....	\$	4227
35. Comprehensive income (loss).....	\$	4228

MONTHLY INCOME

36. Net income (current month only) before comprehensive income and provision for federal income taxes.....	\$	4211
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Name of Firm: _____

As of: _____

CAPITAL WITHDRAWALS

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Stand-Alone SBSB
Broker-Dealer SBSB
Broker-Dealer MSBSP

OWNERSHIP EQUITY AND SUBORDINATED LIABILITIES MATURING OR PROPOSED TO BE WITHDRAWN WITHIN THE NEXT SIX MONTHS AND ACCRUALS, WHICH HAVE NOT BEEN DEDUCTED IN THE COMPUTATION OF NET CAPITAL

Type of Proposed Withdrawal or Accrual (See below for code to enter)	Name of Lender or Contributor	Insider or Outsider? (In or Out)	Amount to be Withdrawn (cash amount and/or Net Capital Value of Securities)	(MM/DD/YY) Withdrawal or Maturity Date	Expect to Renew (Yes or No)
4600	4601	4602	\$ 4603	4604	4605
4610	4611	4612	\$ 4613	4614	4615
4620	4621	4622	\$ 4623	4624	4625
4630	4631	4632	\$ 4633	4634	4635
4640	4641	4642	\$ 4643	4644	4645
4650	4651	4652	\$ 4653	4654	4655
4660	4661	4662	\$ 4663	4664	4665
4670	4671	4672	\$ 4673	4674	4675
4680	4681	4682	\$ 4683	4684	4685
4690	4691	4692	\$ 4693	4694	4695
			Total: \$	4699*	

* To agree with the total on Recap (Line Item 4880)

Instructions: Detailed listing must include the total of items maturing during the six month period following the report date, regardless of whether or not the capital contribution is expected to be renewed. This section must also include proposed capital withdrawals scheduled within the six month period following the report date including the proposed redemption of stock and payments of liabilities secured by fixed assets (which are considered allowable assets in the capital computation, which could be required by the lender on demand or in less than six months.

- | | |
|--------------|--|
| CODE: | DESCRIPTIONS: |
| 1. | Equity capital |
| 2. | Subordinated liabilities |
| 3. | Accruals |
| 4. | Assets not readily convertible into cash |

Name of Firm: _____
As of: _____

CAPITAL WITHDRAWALS
RECAP

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Stand-Alone SBSB
Broker-Dealer SBSB
Broker-Dealer MSBSP

**OWNERSHIP EQUITY AND SUBORDINATED LIABILITIES MATURING OR PROPOSED TO BE WITHDRAWN WITHIN THE NEXT SIX MONTHS
AND ACCRUALS, WHICH HAVE NOT BEEN DEDUCTED IN THE COMPUTATION OF NET CAPITAL**

1. Equity capital			
A. Partnership and limited liability company capital			
1. General partners	\$		4700
2. Limited partners and limited liability company members	\$		4710
3. Undistributed profits	\$		4720
4. Other (describe below)	\$		4730
5. Sole proprietorship	\$		4735
B. Corporation capital			
1. Common stock	\$		4740
2. Preferred stock	\$		4750
3. Retained earnings (dividends and other)	\$		4760
4. Other (describe below)	\$		4770
2. Subordinated liabilities			
A. Secured demand notes	\$		4780
B. Cash subordinates	\$		4790
C. Debentures	\$		4800
D. Other (describe below)	\$		4810
3. Other accrued withdrawals			
A. Bonuses	\$		4820
B. Voluntary contributions to pension or profit sharing plans	\$		4860
C. Other (describe below)	\$		4870
		Total (sum of Lines 1-3): \$	4880
4. Description of Other			

**STATEMENT OF CHANGES IN OWNERSHIP EQUITY
(SOLE PROPRIETORSHIP, PARTNERSHIP, LLC OR CORPORATION)**

1. Balance, beginning of period	\$		4240
A. Net income (loss) or comprehensive income (loss), as applicable	\$		4250
B. Additions (includes non-conforming capital of	\$	4263	4260
C. Deductions (includes non-conforming capital of	\$	4272	4270
2. Balance, end of period (from Line Item 1800)	\$		4290

**STATEMENT OF CHANGES IN LIABILITIES
SUBORDINATED TO CLAIMS OF CREDITORS**

3. Balance, beginning of period	\$		4300
A. Increases	\$		4310
B. Decreases .....	\$	(	4320
4. Balance, end of period (from Item 3520)	\$		4330

Name of Firm: _____
As of: _____

FINANCIAL AND OPERATIONAL DATA

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Stand-Alone SBSB
Broker-Dealer SBSB
Broker-Dealer MSBSP

	<u>Valuation</u>	<u>Number</u>
1. Month end total number of stock record breaks		
A. Breaks long unresolved for more than three business days.....	\$ _____ 4890	_____ 4900
B. Breaks short unresolved for more than seven business days after discovery	\$ _____ 4910	_____ 4920
2. Is the firm in compliance with Rule 17a-13 or 18a-9, as applicable, regarding periodic count and verification of securities positions and locations at least once in each calendar quarter? (Check one).....	Yes <input type="checkbox"/> 4930	No <input type="checkbox"/> 4940
3. Personnel employed at end of reporting period		
A. Income producing personnel.....		_____ 4950
B. Non-income producing personnel (all other).....		_____ 4960
C. Total (sum of Lines 3A-3B).....		_____ 4970
4. Actual number of tickets executed during the reporting period		_____ 4980
5. Number of corrected customer confirmations sent after settlement date.....		_____ 4990
	<u>No. of Items</u>	<u>Ledger Amount</u> <u>Market Value</u>
6. Failed to deliver 5 business days or longer (21 business days or longer in the case of municipal securities).....	_____ 5360	\$ _____ 5361 \$ _____ 5362
7. Failed to receive 5 business days or longer (21 business days or longer in the case of municipal securities).....	_____ 5363	\$ _____ 5364 \$ _____ 5365
8. Security (including security-based swap) concentrations		
A. Proprietary positions for which there is an undue concentration.....		\$ _____ 5370
B. Customers' and security-based swap customers' accounts under Rules 15c3-3 or 18a-4, as applicable.....		\$ _____ 5374
9. Total of personal capital borrowings due within six months		\$ _____ 5378
10. Maximum haircuts on underwriting commitments during the reporting period.....		\$ _____ 5380
11. Planned capital expenditures for business expansion during next six months		\$ _____ 5382
12. Liabilities of other individuals or organizations guaranteed by respondent.....		\$ _____ 5384
13. Lease and rentals payable within one year		\$ _____ 5386
14. Aggregate lease and rental commitments payable for entire term of the lease		
A. Gross.....		\$ _____ 5388
B. Net.....		\$ _____ 5390

Name of Firm: _____
As of: _____

FINANCIAL AND OPERATIONAL DATA

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Stand-Alone SBSB
Broker-Dealer SBSB
Broker-Dealer MSBSP

Operational Deductions from Capital – Note A

	I No. of Items	II Debits (Short Value) (Omit 000's)	III Credits (Long Value) (Omit 000's)	IV Deductions in Computing Net Capital (Omit Pennies)
1. Money suspense and balancing differences		5610	5810	6010
2. Security suspense and differences with related money balances.....	L	5620	5820	6020
	S	5625	5825	6025
3. Market value of short and long security suspense and differences without related money balances (other than reported in Line 4, below)		5630	5830	6030
4. Market value of security record breaks.....		5640	5840	6040
5. Unresolved reconciling differences with others				
A. Correspondents, broker-dealers, SBSBs, and MSBSPs.....	L	5650	5850	6050
	S	5655	5855	6055
B. Depositories		5660	5860	6060
C. Clearing organizations	L	5670	5870	6070
	S	5675	5875	6075
D. Inter-company accounts.....		5680	5880	6080
E. Bank accounts and loans		5690	5890	6090
F. Other.....		5700	5900	6100
G. (Offsetting) Lines 5A through 5F		5720	5920	6120
TOTAL (Lines 5A-5G).....		5730	5930	6130
6. Commodity differences		5740	5940	6140
7. Open transfers and reorganization account items over 40 days not confirmed or verified.....		5760	5960	6160
8. TOTAL (Lines 1-7).....		5770	5970	6170
9. Lines 1-6 resolved subsequent to report date		5775	5975	6175
10. Aged fails – to deliver.....		5780	5980	6180
– to receive		5785	5985	6185

NOTE A - This section must be completed as follows:

- The filers must complete Column IV, Lines 1 through 8 and 10, reporting deductions from capital as of the report date whether resolved subsequently or not (see instructions relative to each line item).
- Columns I, II and III of Lines 1 through 8 must be completed only if the total deduction on Column IV of Line 8 equals or exceeds 25% of excess net capital as of the prior month end reporting date. All columns of Line 10 require completion.
- A response to Columns I through IV of Line 9 and the "Potential Operational Charges Not Deducted From Capital-Note B" are required only if:
 - The parameters cited in Note A-2 exist, and
 - The total deduction, Line 8, Column IV, for the current month exceeds the total deductions for the prior month by 50% or more.
- All columns and Lines 1 through 10 must be answered if required. If respondent has nothing to report, enter "0."

Other Operational Data (Items 1, 2 and 3 below require an answer)

- Item 1. Have the accounts enumerated on Lines 5A through 5F above been reconciled with statements received from others within 35 days for Lines 5A through 5D and 65 days for Lines 5E and 5F prior to the report date and have all reconciling differences been appropriately comprehended in the computation of net capital at the report date? If this has not been done in all respects, answer No.
- Yes _____ 5600
No _____ 5601
- Item 2. Do the respondent's books reflect a concentrated position in commodities? If yes, report the totals (\$000 omitted) in accordance with the specific instructions. If No, answer "0" for:
- A. Firm trading and investment accounts \$ _____ 5602
B. Customers' and non-customers' and other accounts..... \$ _____ 5603
- Item 3. Does respondent have any planned operational changes? (Answer Yes or No based on specific instructions.)
- Yes _____ 5604
No _____ 5605

Name of Firm: _____

As of: _____

FINANCIAL AND OPERATIONAL DATA

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Stand-Alone SBSB
Broker-Dealer SBSB
Broker-Dealer MSBSP

Potential Operational Charges Not Deducted from Capital – Note B

	I No. of Items	II Debits (Short Value) (Report in Thousands)	III Credits (Long Value) (Report in Thousands)	IV Deductions in Computing Net Capital (Omit Pennies)
1. Money suspense and balancing differences.....	6210	\$ 6410	\$ 6610	\$ 6612
2. Security suspense and differences with related money balances.....	L 6220	\$ 6420	\$ 6620	\$ 6622
	S 6225	\$ 6425	\$ 6625	\$ 6627
3. Market value of short and long security suspense and differences without related money (other than reported in Line 4, below).....	6230	\$ 6430	\$ 6630	\$ 6632
4. Market value of security record breaks.....	6240	\$ 6440	\$ 6640	\$ 6642
5. Unresolved reconciling differences with others				
A. Correspondents, broker-dealers, SBSBs, and MSBSPs.....	L 6250	\$ 6450	\$ 6650	\$ 6652
	S 6255	\$ 6455	\$ 6655	\$ 6657
B. Depositories.....	6260	\$ 6460	\$ 6660	\$ 6662
C. Clearing organizations.....	L 6270	\$ 6470	\$ 6670	\$ 6672
	S 6275	\$ 6475	\$ 6675	\$ 6677
D. Inter-company accounts.....	6280	\$ 6480	\$ 6680	\$ 6682
E. Bank accounts and loans.....	6290	\$ 6490	\$ 6690	\$ 6692
F. Other.....	6300	\$ 6500	\$ 6700	\$ 6702
G. (Offsetting) Lines 5A through 5F.....	6310	\$(6510)	\$(6710)	
TOTAL (Lines 5A-5G).....	6330	\$ 6530	\$ 6730	\$ 6732
6. Commodity differences.....	6340	\$ 6540	\$ 6740	\$ 6742
7. TOTAL (Lines 1-6).....	6370	\$ 6570	\$ 6770	\$ 6772

NOTE B - This section must be completed as follows:

- Lines 1 through 6 and Columns I through IV must be completed only if:
 - The total deductions on Line 8, Column IV, of the "Operational Deductions From Capital-Note A" equal or exceed 25% of excess net capital as of the prior month end reporting date; and
 - The total deduction on Line 8, Column IV, of the "Operational Deductions From Capital-Note A" for the current month exceeds the total deductions for the prior month by 50% or more. If respondent has nothing to report, enter "0."
- Include only suspense and difference items open at the report date which were NOT required to be deducted in the computation of net capital AND which were not resolved seven (7) business days subsequent to the report date.
- Include in Column IV only additional deductions not comprehended in the computation of net capital at the report date.
- Include on Lines 5A through 5F unfavorable differences offset by favorable differences at the report date if resolution of the favorable items resulted in additional deductions in the computation of net capital subsequent to the report date.
- Exclude from Lines 5A through 5F new reconciling differences disclosed as a result of reconciling with the books of account statements received subsequent to the report date.
- Lines 1 through 5 above correspond to similar lines in the "Operational Deductions From Capital-Note A" and the same instructions should be followed except as stated in Notes B-1 through B-5 above.

Name of Firm: _____
As of: _____

COMPUTATION FOR DETERMINATION OF CUSTOMER RESERVE REQUIREMENTS

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Broker-Dealer SBSD
Broker-Dealer MSBSP

CREDIT BALANCES

1. Free credit balances and other credit balances in customers' security accounts (see Note A).....	\$	4340
2. Monies borrowed collateralized by securities carried for the accounts of customers (see Note B)	\$	4350
3. Monies payable against customers' securities loaned (see Note C).....	\$	4360
4. Customers' securities failed to receive (see Note D).....	\$	4370
5. Credit balances in firm accounts which are attributable to principal sales to customers.....	\$	4380
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days	\$	4390
7. **Market value of short security count differences over 30 calendar days old	\$	4400
8. **Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days.....	\$	4410
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days	\$	4420
10. Other (List: _____).....	\$	4425
11. TOTAL CREDITS (sum of Lines 1-10).....	\$	4430

DEBIT BALANCES

12. **Debit balances in customers' cash and margin accounts, excluding unsecured accounts and accounts doubtful of collection (see Note E).....	\$	4440
13. Securities borrowed to effectuate short sales by customers and securities borrowed to make delivery on customers' securities failed to deliver	\$	4450
14. Failed to deliver of customers' securities not older than 30 calendar days.....	\$	4460
15. Margin required and on deposit with the Options Clearing Corporation for all option contracts written or purchased in customer accounts (see Note F).....	\$	4465
16. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) related to the following types of positions written, purchased or sold in customer accounts: (1) security futures products and (2) futures contracts (and options thereon) carried in a securities account pursuant to an SRO portfolio margining rule (see Note G).....	\$	4467
17. Other (List: _____).....	\$	4469
18. **Aggregate debit items (sum of Lines 12-17).....	\$	4470
19. **Less 3% (for alternative method only - see Rule 15c3-1(a)(1)(ii)) (3% x Line Item 4470).....	\$	4471
20. **TOTAL DEBITS (Line 18 less Line 19).....	\$	4472

RESERVE COMPUTATION

21. Excess of total debits over total credits (Line 20 less Line 11).....	\$	4480
22. Excess of total credits over total debits (Line 11 less Line 20).....	\$	4490
23. If computation is made monthly as permitted, enter 105% of excess of total credits over total debits	\$	4500
24. Amount held on deposit in "Reserve Bank Account(s)," including \$ 4505 value of qualified securities, at end of reporting period.....	\$	4510
25. Amount of deposit (or withdrawal) including \$ 4515 value of qualified securities.....	\$	4520
26. New amount in Reserve Bank Account(s) after adding deposit or subtracting withdrawal including \$ 4525 value of qualified securities	\$	4530
27. Date of deposit (MM/DD/YY).....	\$	4540

FREQUENCY OF COMPUTATION

28. Daily 4332 Weekly 4333 Monthly 4334

** In the event the net capital requirement is computed under the alternative method, this reserve formula must be prepared in accordance with the requirements of paragraph (a)(1)(ii) of Rule 15c3-1.

References to notes in this section refer to the notes to 17 CFR 240.15c3-1a.

Name of Firm: _____
As of: _____

POSSESSION OR CONTROL FOR CUSTOMERS

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Broker-Dealer SBSD
Broker-Dealer MSBSP

State the market valuation and number of items of:

1. Customers' fully paid securities and excess margin securities not in the respondent's possession or control as of the report date (for which instructions to reduce to possession or control had been issued as of the report date) but for which the required action was not taken by respondent within the time frames specified under Rule 15c3-3. Notes A and B..... \$ 4586
 A. Number of items..... 4587
2. Customers' fully paid securities and excess margin securities for which instructions to reduce to possession or control had not been issued as of the report date, excluding items arising from "temporary lags which result from normal business operations" as permitted under Rule 15c3-3. Notes B, C and D..... \$ 4588
 A. Number of items..... 4589
3. The system and procedures utilized in complying with the requirement to maintain physical possession or control of customers' fully paid and excess margin securities have been tested and are functioning in a manner adequate to fulfill the requirements of Rule 15c3-3..... Yes 4584 No 4583

Notes:

- A – Do not include in Line 1 customers' fully paid and excess margin securities required by Rule 15c3-3 to be in possession or control but for which no action was required by the respondent as of the report date or required action was taken by respondent within the time frames specified under Rule 15c3-3.
- B – State separately in response to Lines 1 and 2 whether the securities reported in response thereto were subsequently reduced to possession or control by the respondent.
- C – Be sure to include in Line 2 only items not arising from "temporary lags which result from normal business operations" as permitted under Rule 15c3-3.
- D – Line 2 must be responded to only with a report which is filed as of the date selected for the broker's or dealer's annual audit of financial statements, whether or not such date is the end of a calendar quarter. The response to Line 2 should be filed within 60 calendar days after such date, rather than with the remainder of this report. This information may be required on a more frequent basis by the Commission or the designated examining authority in accordance with Rule 17a-5(a)(2)(iv).

Name of Firm: _____

As of: _____

COMPUTATION FOR DETERMINATION OF PAB REQUIREMENTS

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Broker-Dealer SBSB
Broker-Dealer MSBSP

CREDIT BALANCES

1. Free credit balances and other credit balances in PAB security accounts (see Note A)	\$	_____	2110
2. Monies borrowed collateralized by securities carried for the accounts of PAB (see Note B).....	\$	_____	2120
3. Monies payable against PAB securities loaned (see Note C)	\$	_____	2130
4. PAB securities failed to receive (see Note D).....	\$	_____	2140
5. Credit balances in firm accounts which are attributable to principal sales to PAB.....	\$	_____	2150
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days.....	\$	_____	2152
7. **Market value of short security count differences over 30 calendar days old.....	\$	_____	2154
8. **Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days	\$	_____	2156
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days	\$	_____	2158
10. Other (List: _____).....	\$	_____	2160
11. TOTAL PAB CREDITS (sum of Lines 1-10)	\$	_____	2170

DEBIT BALANCES

12. Debit balances in PAB cash and margin accounts, excluding unsecured accounts and accounts doubtful of collection (see Note E).....	\$	_____	2180
13. Securities borrowed to effectuate short sales by PAB and securities borrowed to make delivery on PAB securities failed to deliver.....	\$	_____	2190
14. Failed to deliver of PAB securities not older than 30 calendar days	\$	_____	2200
15. Margin required and on deposit with Options Clearing Corporation for all option contracts written or purchased in PAB accounts (see Note F).....	\$	_____	2210
16. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) related to the following types of positions written, purchased or sold in PAB accounts: (1) security futures products and (2) futures contracts (and options thereon) carried in a securities account pursuant to an SRO portfolio margining rule (see Note G)	\$	_____	2215
17. Other (List: _____).....	\$	_____	2220
18. TOTAL PAB DEBITS (sum of Lines 12-17).....	\$	_____	2230

RESERVE COMPUTATION

19. Excess of total PAB debits over total PAB credits (Line 18 less Line 11)	\$	_____	2240
20. Excess of total PAB credits over total PAB debits (Line 11 less Line 18)	\$	_____	2250
21. Excess debits in customer reserve formula computation	\$	_____	2260
22. PAB reserve requirement (Line 20 less Line 21).....	\$	_____	2270
23. Amount held on deposit in Reserve Bank Account(s) including \$ _____ 2275 value of qualified securities, at end of reporting period	\$	_____	2280
24. Amount of deposit (or withdrawal) including \$ _____ 2285 value of qualified securities	\$	_____	2290
25. New amount in Reserve Bank Account(s) after adding deposit or subtracting withdrawal including \$ _____ 2295 value of qualified securities.....	\$	_____	2300
26. Date of deposit (MM/DD/YY).....		_____	2310

FREQUENCY OF COMPUTATION

27. Daily _____ 2315 Weekly _____ 2320 Monthly _____ 2330

* See notes regarding PAB Reserve Bank Account Computation (Notes 1-10).

** In the event the net capital requirement is computed under the alternative method, this reserve formula must be prepared in accordance with the requirements of paragraph (a)(1)(ii) of Rule 15c3-1.

References to notes in this section refer to the notes to 17 CFR 240.15c3-1a.

Name of Firm: _____

As of: _____

CLAIMING AN EXEMPTION FROM RULE 15c3-3

Items on this page to be reported by a: Stand-Alone Broker-Dealer (if claiming an exemption from Rule 15c3-3)
 Broker-Dealer SBSB (if claiming an exemption from Rule 15c3-3)
 Broker-Dealer MSBSP (if claiming an exemption from Rule 15c3-3)

EXEMPTIVE PROVISION UNDER RULE 15c3-3

If an exemption from Rule 15c3-3 is claimed, identify below the section upon which such exemption is based (check all that apply):

- A. (k)(1) – \$2,500 capital category as per Rule 15c3-3..... 4550
- B. (k)(2)(i) – “Special Account for the Exclusive Benefit of Customers” maintained..... 4560
- C. (k)(2)(ii) – All customer transactions cleared through another broker-dealer on a fully disclosed basis
 Name of clearing firm: 4335 4570
- D. (k)(3) – Exempted by order of the Commission (include copy of letter) 4580

Name of Firm: _____

As of: _____

COMPUTATION FOR DETERMINATION OF SECURITY-BASED SWAP CUSTOMER RESERVE REQUIREMENTS

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Stand-Alone SBSB
Broker-Dealer SBSB

CREDIT BALANCES

1. Free credit balances and other credit balances in the accounts carried for security-based swap customers (see Note A).....	\$	_____	12069
2. Monies borrowed collateralized by securities in accounts carried for security-based swap customers (see Note B)	\$	_____	12070
3. Monies payable against security-based swap customers' securities loaned (see Note C)	\$	_____	12071
4. Security-based swap customers' securities failed to receive (see Note D).....	\$	_____	12072
5. Credit balances in firm accounts attributable to principal sales to security-based swap customers	\$	_____	12073
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days	\$	_____	12074
7. **Market value of short security count differences over 30 calendar days old.....	\$	_____	12075
8. **Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days.....	\$	_____	12076
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days.....	\$	_____	12077
10. Other (List: _____).....	\$	_____	12078
11. TOTAL CREDITS (sum of Lines 1-10)	\$	_____	12089

DEBIT BALANCES

12. Debit balances in accounts carried for security-based swap customers, excluding unsecured accounts and accounts doubtful of collection (see Note E).....	\$	_____	12079
13. Securities borrowed to effectuate short sales by security-based swap customers and securities borrowed to make delivery on security-based swap customers' securities failed to deliver	\$	_____	12080
14. Failed to deliver of security-based swap customers' securities not older than 30 calendar days.....	\$	_____	12081
15. Margin required and on deposit with Options Clearing Corporation for all option contracts written or purchased in accounts carried for security-based swap customers (see Note F)	\$	_____	12082
16. Margin related to security future products written, purchased or sold in accounts carried for security-based swap customers required and on deposit in a qualified clearing agency account at a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) or a derivative clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) (see Note G).....	\$	_____	12083
17. Margin related to cleared security-based swap transactions in accounts carried for security-based swap customers required and on deposit in a qualified clearing agency account at a clearing agency registered with the Commission pursuant to section 17A of the Exchange Act (15 U.S.C. 78q-1)	\$	_____	12084
18. Margin related to non-cleared security-based swap transactions in accounts carried for security-based swap customers required and held in a qualified registered security-based swap dealer account at another security-based swap dealer.....	\$	_____	12085
19. Other (List: _____).....	\$	_____	12086
20. **Aggregate debit items	\$	_____	12090
21. **TOTAL DEBITS (sum of Lines 12-19)	\$	_____	12091

RESERVE COMPUTATION

22. Excess of total debits over total credits (Line 21 less Line 11).....	\$	_____	12092
23. Excess of total credits over total debits (Line 11 less Line 21).....	\$	_____	12093
24. Amount held on deposit in "Reserve Account(s)," including value of qualified securities, at end of reporting period	\$	_____	12094
25. Amount of deposit (or withdrawal) including \$ _____ 12087 value of qualified securities	\$	_____	12095
26. New amount in Reserve Account(s) after adding deposit or subtracting withdrawal including \$ _____ 12088 value of qualified securities	\$	_____	12096
27. Date of deposit (MM/DD/YY).....	\$	_____	12097

** In the event the net capital requirement is computed under the alternative method, this reserve formula must be prepared in accordance with the requirements of paragraph (a)(1)(ii) of Rule 15c3-1.

References to notes in this section refer to the notes to 17 CFR 240.15c3-3b or 17 CFR 240.18a-4a, as applicable.

Name of Firm: _____

As of: _____

POSSESSION OR CONTROL FOR SECURITY-BASED SWAP CUSTOMERS

Items on this page to be reported by a: Stand-Alone Broker-Dealer
Stand-Alone SBSD
Broker-Dealer SBSD

State the market valuation and number of items of:

1. Security-based swap customers' excess securities collateral not in the respondent's possession or control as of the report date (for which instructions to reduce to possession or control had been issued as of the report date) but for which the required action was not taken by respondent within the time frame specified under Rule 15c3-3(p) or Rule 18a-4, as applicable. Notes A and B..... \$ _____ 12098
 A. Number of items..... _____ 12099
2. Security-based swap customers' excess securities collateral for which instructions to reduce possession or control had not been issued as of the report date under Rule 15c3-3(p) or Rule 18a-4, as applicable..... \$ _____ 12100
 A. Number of items..... _____ 12101
3. The system and procedures utilized in complying with the requirement to maintain physical possession or control of security-based swap customers' excess securities collateral have been tested and are functioning in a manner adequate to fulfill the requirements of Rule 15c3-3(p) or Rule 18a-4, as applicable Yes _____ 12102 No _____ 12103

Notes:

- A – Do not include in Line 1 security-based swap customers' excess securities collateral required to be in possession or control but for which no action was required by the respondent as of the report date or required action was taken by respondent within the required time frames.
- B – State separately in response to Line 1 whether the securities reported in response thereto were subsequently reduced to possession or control by the respondent.

Name of Firm: _____
 As of: _____

Items on this page to be reported by: Futures Commission Merchant

NET CAPITAL REQUIRED

A. Risk-based requirement

i. Amount of customer risk

Maintenance margin \$ 7415

ii. Enter 8% of Line A.i \$ 7425

iii. Amount of non-customer risk

Maintenance margin \$ 7435

iv. Enter 8% of Line A.iii \$ 7445

v. Enter the sum of Lines A.ii and A.iv \$ 7455

B. Minimum dollar amount requirement \$ 7465

C. Other NFA requirement \$ 7475

D. Minimum CFTC net capital requirement

Enter the greatest of Lines A.v, B, or C \$ 7490

Note: If amount on Line D is greater than the minimum net capital requirement computed on Item 3760, then enter this greater amount on Item 3760. The greater of the amount required by the SEC or CFTC is the minimum net capital requirement.

CFTC early warning level – enter the greatest of 110% of Line A.v. or 150% of Line B or 150% of Line C or \$375,000 \$ 7495

Name of Firm: _____

As of: _____

Items on this page to be reported by a: Futures Commission Merchant

SEGREGATION REQUIREMENTS

1. Net ledger balance		
A. Cash.....	\$	7010
B. Securities (at market).....	\$	7020
2. Net unrealized profit (loss) in open futures contracts traded on a contract market.....	\$	7030
3. Exchange traded options		
A. Add: Market value of open option contracts purchased on a contract market.....	\$	7032
B. Deduct: Market value of open option contracts granted (sold) on a contract market.....	\$ (	7033
4. Net equity (deficit) (total of Lines 1, 2 and 3).....	\$	7040
5. Accounts liquidating to a deficit and accounts with debit balances – gross amount.....	\$	7045
Less: amount offset by customer owned securities.....	\$ (	7047
6. Amount required to be segregated (add Lines 4 and 5).....	\$	7060

FUNDS IN SEGREGATED ACCOUNTS

7. Deposited in segregated funds bank accounts		
A. Cash.....	\$	7070
B. Securities representing investments of customers' funds (at market).....	\$	7080
C. Securities held for particular customers or option customers in lieu of cash (at market).....	\$	7090
8. Margin on deposit with derivative clearing organizations of contract markets		
A. Cash.....	\$	7100
B. Securities representing investments of customers' funds (at market).....	\$	7110
C. Securities held for particular customers or option customers in lieu of cash (at market).....	\$	7120
9. Net settlement from (to) derivative clearing organizations of contract markets.....	\$	7130
10. Exchange traded options		
A. Value of open long option contracts.....	\$	7132
B. Value of open short option contracts.....	\$ (	7133
11. Net equities with other FCMs		
A. Net liquidating equity.....	\$	7140
B. Securities representing investments of customers' funds (at market).....	\$	7160
C. Securities held for particular customers or option customers in lieu of cash (at market).....	\$	7170
12. Segregated funds on hand (describe: _____).....	\$	7150
13. Total amount in segregation (add Lines 7 through 12).....	\$	7180
14. Excess (deficiency) funds in segregation (subtract Line 6 from Line 13).....	\$	7190
15. Management target amount for excess funds in segregation.....	\$	7194
16. Excess (deficiency) funds in segregation over (under) management target amount excess.....	\$	7198

Name of Firm: _____

As of: _____

STATEMENT OF CLEARED SWAPS CUSTOMER SEGREGATION REQUIREMENTS AND FUNDS IN CLEARED SWAPS CUSTOMER
ACCOUNTS UNDER SECTION 4D(F) OF THE COMMODITY EXCHANGE ACT

Items on this page to be reported by: Futures Commission Merchant

CLEARED SWAPS CUSTOMER REQUIREMENTS

1. Net ledger balance			
A. Cash	\$		8500
B. Securities (at market)	\$		8510
2. Net unrealized profit (loss) in open cleared swaps	\$		8520
3. Cleared swaps options			
A. Market value of open cleared swaps option contracts purchased	\$		8530
B. Market value of open cleared swaps option contracts granted (sold) .....	\$	(	8540
4. Net equity (deficit) (add Lines 1, 2, and 3)	\$		8550
5. Accounts liquidating to a deficit and accounts with debit balances – gross amount	\$		8560
Less: amount offset by customer owned securities .....	\$	(	8570
6. Amount required to be segregated for cleared swaps customers (add Lines 4 and 5)	\$		8590

FUNDS IN CLEARED SWAPS CUSTOMER SEGREGATED ACCOUNTS

7. Deposited in cleared swaps customer segregated accounts at banks			
A. Cash	\$		8600
B. Securities representing investments of cleared swaps customers' funds (at market)	\$		8610
C. Securities held for particular cleared swaps customers in lieu of cash (at market)	\$		8620
8. Margins on deposit with derivatives clearing organizations in cleared swaps customer segregated accounts			
A. Cash	\$		8630
B. Securities representing investments of cleared swaps customers' funds (at market)	\$		8640
C. Securities held for particular cleared swaps customers in lieu of cash (at market)	\$		8650
9. Net settlement from (to) derivatives clearing organizations	\$		8660
10. Cleared swaps options			
A. Value of open cleared swaps long option contracts	\$		8670
B. Value of open cleared swaps short option contracts .....	\$	(	8680
11. Net equities with other FCMs			
A. Net liquidating equity	\$		8690
B. Securities representing investments of cleared swaps customers' funds (at market)	\$		8700
C. Securities held for particular cleared swaps customers in lieu of cash (at market)	\$		8710
12. Cleared swaps customer funds on hand (describe: _____).	\$		8715
13. Total amount in cleared swaps customer segregation (add Lines 7 through 12)	\$		8720
14. Excess (deficiency) funds in cleared swaps customer segregation (subtract Line 6 from Line 13)	\$		8730
15. Management target amount for excess funds in cleared swaps segregated accounts	\$		8760
16. Excess (deficiency) funds in cleared swaps customer segregated accounts over (under) management target excess	\$		8770

Name of Firm: _____

As of: _____

STATEMENT OF SEGREGATION REQUIREMENTS AND FUNDS IN SEGREGATION
FOR CUSTOMERS' DEALER OPTIONS ACCOUNTS

Items on this page to be reported by a: Futures Commission Merchant

1. Amount required to be segregated in accordance with 17 CFR 32.6.....		\$	_____	7200
2. Funds/property in segregated accounts				
A. Cash.....	\$	_____	7210	
B. Securities (at market value).....	\$	_____	7220	
C. Total funds/property in segregated accounts.....	\$	_____	7230	
3. Excess (deficiency) funds in segregation (subtract Line 2C from Line 1).....	\$	_____	7240	

Name of Firm: _____

As of: _____

STATEMENT OF SECURED AMOUNTS AND FUNDS HELD IN SEPARATE ACCOUNTS
FOR FOREIGN FUTURES AND FOREIGN OPTIONS CUSTOMERS PURSUANT TO CFTC REGULATION 30.7

Items on this page to be reported by: Futures Commission Merchant

FUNDS DEPOSITED IN SEPARATE 17 CFR. 30.7 ACCOUNTS

1. Cash in banks			
A. Banks located in the United States	\$		7500
B. Other banks qualified under 17 CFR. 30.7			
Name(s):	7510	\$	7520 \$ 7530
2. Securities			
A. In safekeeping with banks located in the United States.....	\$		7540
B. In safekeeping with other banks designated by 17 CFR. 30.7			
Name(s):	7550	\$	7560 \$ 7570
3. Equities with registered futures commission merchants			
A. Cash.....	\$		7580
B. Securities.....	\$		7590
C. Unrealized gain (loss) on open futures contracts.....	\$		7600
D. Value of long option contracts.....	\$		7610
E. Value of short option contracts.....	\$ (		7615 \$ 7620
4. Amounts held by clearing organizations of foreign boards of trade			
Name(s):	7630		
A. Cash.....	\$		7640
B. Securities.....	\$		7650
C. Amount due to (from) clearing organizations - daily variation.....	\$		7660
D. Value of long option contracts.....	\$		7670
E. Value of short option contracts.....	\$ (		7675 \$ 7680
5. Amounts held by members of foreign boards of trade			
Name(s):	7690		
A. Cash.....	\$		7700
B. Securities.....	\$		7710
C. Unrealized gain (loss) on open futures contracts.....	\$		7720
D. Value of long option contracts.....	\$		7730
E. Value of short option contracts.....	\$ (		7735 \$ 7740
6. Amounts with other depositories designated by a foreign board of trade			
Name(s):	7750	\$	7760
7. Segregated funds on hand (describe:)..			
		\$	7765
8. Total funds in separate 17 CFR 30.7 accounts			
		\$	7770
9. Excess (deficiency) set aside funds for secured amount (Line Item 7770 minus Line Item 7360).....			
		\$	7380
10. Management target amount for excess funds in separate 17 CFR 30.7 accounts.....			
		\$	7780
11. Excess (deficiency) funds in separate 17 CFR 30.7 accounts over (under) management target excess.....			
		\$	7785

Name of Firm: _____

As of: _____

SCHEDULE 1 – AGGREGATE SECURITIES, COMMODITIES, AND SWAPS POSITIONS

Items on this page to be reported by: Stand-Alone Broker-Dealer
Stand-Alone SBSB
Broker-Dealer SBSB
Stand-Alone MSBSP
Broker-Dealer MSBSP

Aggregate Securities, Commodities, and Swaps Positions	LONG/BOUGHT	SHORT/SOLD
1. U.S. treasury securities.....	\$ _____ 8200	\$ _____ 8201
2. U.S. government agency and U.S. government-sponsored enterprises.....	\$ _____ 8210	\$ _____ 8211
A. Mortgage-backed securities issued by U.S. government agency and U.S. government-sponsored enterprises	\$ _____ 18001	\$ _____ 18002
B. Debt securities issued by U.S. government agency and U.S. government-sponsored enterprises	\$ _____ 18003	\$ _____ 18004
3. Securities issued by states and political subdivisions in the U.S	\$ _____ 8220	\$ _____ 8221
4. Foreign securities		
A. Debt securities.....	\$ _____ 8230	\$ _____ 8231
B. Equity securities	\$ _____ 8235	\$ _____ 8236
5. Money market instruments.....	\$ _____ 8240	\$ _____ 8241
6. Private label mortgage backed securities.....	\$ _____ 8250	\$ _____ 8251
7. Other asset-backed securities	\$ _____ 8260	\$ _____ 8261
8. Corporate obligations.....	\$ _____ 8270	\$ _____ 8271
9. Stocks and warrants (other than arbitrage positions).....	\$ _____ 8280	\$ _____ 8281
10. Arbitrage.....	\$ _____ 8290	\$ _____ 8291
11. Spot commodities	\$ _____ 8330	\$ _____ 8331
12. Other securities and commodities	\$ _____ 8360	\$ _____ 8361
13. Securities with no ready market		
A. Equity.....	\$ _____ 8340	\$ _____ 8341
B. Debt	\$ _____ 8345	\$ _____ 8346
C. Other.....	\$ _____ 8350	\$ _____ 8351
D. Total securities with no ready market	\$ _____ 12777	\$ _____ 12782
14. Total net securities and spot commodities (sum of Lines 1-12 and 13D).....	\$ _____ 12778	\$ _____ 12783
15. Security-based swaps		
A. Cleared.....	\$ _____ 12106	\$ _____ 12114
B. Non-cleared.....	\$ _____ 12107	\$ _____ 12115
16. Mixed swaps		
A. Cleared.....	\$ _____ 12108	\$ _____ 12116
B. Non-cleared.....	\$ _____ 12109	\$ _____ 12117
17. Swaps		
A. Cleared.....	\$ _____ 12110	\$ _____ 12118
B. Non-cleared.....	\$ _____ 12111	\$ _____ 12119
18. Other derivatives and options.....	\$ _____ 8295	\$ _____ 8296
19. Counterparty netting	\$ _____ 12779	\$ _____ 12784
20. Cash collateral netting	\$ _____ 12780	\$ _____ 12785
21. Total derivative receivables and payables (sum of Lines 15-20).....	\$ _____ 12781	\$ _____ 12786
22. Total net securities, commodities, and swaps positions (sum of Lines 14 and 21).....	\$ _____ 8370	\$ _____ 8371

Name of Firm: _____

As of: _____

SCHEDULE 2 – CREDIT CONCENTRATION REPORT FOR FIFTEEN LARGEST EXPOSURES IN DERIVATIVES

Items on this page to be reported by: Stand-Alone Broker-Dealer (Authorized to use models)
Stand-Alone SBSB
Broker-Dealer SBSB
Stand-Alone MSBSP
Broker-Dealer MSBSP

I. By Current Net Exposure

Counterparty Identifier	Gross Replacement Value		Net Replacement Value	Current Net Exposure	Current Net and Potential Exposure	Margin Collected
	Receivable (Gross Gain)	Payable (Gross Loss)				
1.	12120	\$ 12135	\$ 12151	\$ 12167	\$ 12183	\$ 12199
2.	12121	\$ 12136	\$ 12152	\$ 12168	\$ 12184	\$ 12200
3.	12122	\$ 12137	\$ 12153	\$ 12169	\$ 12185	\$ 12201
4.	12123	\$ 12138	\$ 12154	\$ 12170	\$ 12186	\$ 12202
5.	12124	\$ 12139	\$ 12155	\$ 12171	\$ 12187	\$ 12203
6.	12125	\$ 12140	\$ 12156	\$ 12172	\$ 12188	\$ 12204
7.	12126	\$ 12141	\$ 12157	\$ 12173	\$ 12189	\$ 12205
8.	12127	\$ 12142	\$ 12158	\$ 12174	\$ 12190	\$ 12206
9.	12128	\$ 12143	\$ 12159	\$ 12175	\$ 12191	\$ 12207
10.	12129	\$ 12144	\$ 12160	\$ 12176	\$ 12192	\$ 12208
11.	12130	\$ 12145	\$ 12161	\$ 12177	\$ 12193	\$ 12209
12.	12131	\$ 12146	\$ 12162	\$ 12178	\$ 12194	\$ 12210
13.	12132	\$ 12147	\$ 12163	\$ 12179	\$ 12195	\$ 12211
14.	12133	\$ 12148	\$ 12164	\$ 12180	\$ 12196	\$ 12212
15.	12134	\$ 12149	\$ 12165	\$ 12181	\$ 12197	\$ 12213
All other counterparties		\$ 12150	\$ 12166	\$ 12182	\$ 12198	\$ 12214
Totals:		\$ 7810	\$ 7811	\$ 7812	\$ 7813	\$ 7814

II. By Current Net and Potential Exposure

Counterparty Identifier	Gross Replacement Value		Net Replacement Value	Current Net Exposure	Current Net and Potential Exposure	Margin Collected
	Receivable (Gross Gain)	Payable (Gross Loss)				
1.	12232	\$ 12247	\$ 12264	\$ 12281	\$ 12298	\$ 12315
2.	12233	\$ 12248	\$ 12265	\$ 12282	\$ 12299	\$ 12316
3.	12234	\$ 12249	\$ 12266	\$ 12283	\$ 12300	\$ 12317
4.	12235	\$ 12250	\$ 12267	\$ 12284	\$ 12301	\$ 12318
5.	12236	\$ 12251	\$ 12268	\$ 12285	\$ 12302	\$ 12319
6.	12237	\$ 12252	\$ 12269	\$ 12286	\$ 12303	\$ 12320
7.	12238	\$ 12253	\$ 12270	\$ 12287	\$ 12304	\$ 12321
8.	12239	\$ 12254	\$ 12271	\$ 12288	\$ 12305	\$ 12322
9.	12240	\$ 12255	\$ 12272	\$ 12289	\$ 12306	\$ 12323
10.	12241	\$ 12256	\$ 12273	\$ 12290	\$ 12307	\$ 12324
11.	12242	\$ 12257	\$ 12274	\$ 12291	\$ 12308	\$ 12325
12.	12243	\$ 12258	\$ 12275	\$ 12292	\$ 12309	\$ 12326
13.	12244	\$ 12259	\$ 12276	\$ 12293	\$ 12310	\$ 12327
14.	12245	\$ 12260	\$ 12277	\$ 12294	\$ 12311	\$ 12328
15.	12246	\$ 12261	\$ 12278	\$ 12295	\$ 12312	\$ 12329
All other counterparties		\$ 12262	\$ 12279	\$ 12296	\$ 12313	\$ 12330
Totals:		\$ 12263	\$ 12280	\$ 12297	\$ 12314	\$ 12331

Name of Firm: _____

As of: _____

SCHEDULE 3 – PORTFOLIO SUMMARY OF DERIVATIVES EXPOSURES BY INTERNAL CREDIT RATING

Items on this page to be reported by: Stand-Alone Broker-Dealer (Authorized to use models)
Stand-Alone SBSB
Broker-Dealer SBSB
Stand-Alone MSBSP
Broker-Dealer MSBSP

Internal Credit Rating	Gross Replacement Value		Net Replacement Value	Current Net Exposure	Current Net and Potential Exposure	Margin Collected	
	Receivable	Payable					
1.	12349	\$ 12386	\$ 12423	\$ 12460	\$ 12497	\$ 12534	\$ 12572
2.	12350	\$ 12387	\$ 12424	\$ 12461	\$ 12498	\$ 12535	\$ 12573
3.	12351	\$ 12388	\$ 12425	\$ 12462	\$ 12499	\$ 12536	\$ 12574
4.	12352	\$ 12389	\$ 12426	\$ 12463	\$ 12500	\$ 12537	\$ 12575
5.	12353	\$ 12390	\$ 12427	\$ 12464	\$ 12501	\$ 12538	\$ 12576
6.	12354	\$ 12391	\$ 12428	\$ 12465	\$ 12502	\$ 12539	\$ 12577
7.	12355	\$ 12392	\$ 12429	\$ 12466	\$ 12503	\$ 12540	\$ 12578
8.	12356	\$ 12393	\$ 12430	\$ 12467	\$ 12504	\$ 12541	\$ 12579
9.	12357	\$ 12394	\$ 12431	\$ 12468	\$ 12505	\$ 12542	\$ 12580
10.	12358	\$ 12395	\$ 12432	\$ 12469	\$ 12506	\$ 12543	\$ 12581
11.	12359	\$ 12396	\$ 12433	\$ 12470	\$ 12507	\$ 12544	\$ 12582
12.	12360	\$ 12397	\$ 12434	\$ 12471	\$ 12508	\$ 12545	\$ 12583
13.	12361	\$ 12398	\$ 12435	\$ 12472	\$ 12509	\$ 12546	\$ 12584
14.	12362	\$ 12399	\$ 12436	\$ 12473	\$ 12510	\$ 12547	\$ 12585
15.	12363	\$ 12400	\$ 12437	\$ 12474	\$ 12511	\$ 12548	\$ 12586
16.	12364	\$ 12401	\$ 12438	\$ 12475	\$ 12512	\$ 12549	\$ 12587
17.	12365	\$ 12402	\$ 12439	\$ 12476	\$ 12513	\$ 12550	\$ 12588
18.	12366	\$ 12403	\$ 12440	\$ 12477	\$ 12514	\$ 12551	\$ 12589
19.	12367	\$ 12404	\$ 12441	\$ 12478	\$ 12515	\$ 12552	\$ 12590
20.	12368	\$ 12405	\$ 12442	\$ 12479	\$ 12516	\$ 12553	\$ 12591
21.	12369	\$ 12406	\$ 12443	\$ 12480	\$ 12517	\$ 12554	\$ 12592
22.	12370	\$ 12407	\$ 12444	\$ 12481	\$ 12518	\$ 12555	\$ 12593
23.	12371	\$ 12408	\$ 12445	\$ 12482	\$ 12519	\$ 12556	\$ 12594
24.	12372	\$ 12409	\$ 12446	\$ 12483	\$ 12520	\$ 12557	\$ 12595
25.	12373	\$ 12410	\$ 12447	\$ 12484	\$ 12521	\$ 12558	\$ 12596
26.	12374	\$ 12411	\$ 12448	\$ 12485	\$ 12522	\$ 12559	\$ 12597
27.	12375	\$ 12412	\$ 12449	\$ 12486	\$ 12523	\$ 12560	\$ 12598
28.	12376	\$ 12413	\$ 12450	\$ 12487	\$ 12524	\$ 12561	\$ 12599
29.	12377	\$ 12414	\$ 12451	\$ 12488	\$ 12525	\$ 12562	\$ 12600
30.	12378	\$ 12415	\$ 12452	\$ 12489	\$ 12526	\$ 12563	\$ 12601
31.	12379	\$ 12416	\$ 12453	\$ 12490	\$ 12527	\$ 12564	\$ 12602
32.	12380	\$ 12417	\$ 12454	\$ 12491	\$ 12528	\$ 12565	\$ 12603
33.	12381	\$ 12418	\$ 12455	\$ 12492	\$ 12529	\$ 12566	\$ 12604
34.	12382	\$ 12419	\$ 12456	\$ 12493	\$ 12530	\$ 12567	\$ 12605
35.	12383	\$ 12420	\$ 12457	\$ 12494	\$ 12531	\$ 12568	\$ 12606
36.	12384	\$ 12421	\$ 12458	\$ 12495	\$ 12532	\$ 12569	\$ 12607
Unrated	12385	\$ 12422	\$ 12459	\$ 12496	\$ 12533	\$ 12570	\$ 12608
Totals:		\$ 7822	\$ 7823	\$ 7821	\$ 7820	\$ 12571	\$ 12609

Name of Firm: _____
As of: _____

SCHEDULE 4 – GEOGRAPHIC DISTRIBUTION OF DERIVATIVES EXPOSURES FOR TEN LARGEST COUNTRIES

Items on this page to be reported by: Stand-Alone Broker-Dealer (Authorized to use models)
Stand-Alone SBSB
Broker-Dealer SBSB
Stand-Alone MSBSP
Broker-Dealer MSBSP

I. By Current Net Exposure

Country	Gross Replacement Value		Net Replacement Value	Current Net Exposure	Current Net and Potential Exposure	Margin Collected
	Receivable	Payable				
1.	12610	12620	12630	12640	12650	12661
2.	12611	12621	12631	12641	12651	12662
3.	12612	12622	12632	12642	12652	12663
4.	12613	12623	12633	12643	12653	12664
5.	12614	12624	12634	12644	12654	12665
6.	12615	12625	12635	12645	12655	12666
7.	12616	12626	12636	12646	12656	12667
8.	12617	12627	12637	12647	12657	12668
9.	12618	12628	12638	12648	12658	12669
10.	12619	12629	12639	12649	12659	12670
Totals:		7803	7804	7802	12660	7801

II. By Current Net and Potential Exposure

Country	Gross Replacement Value		Net Replacement Value	Current Net Exposure	Current Net and Potential Exposure	Margin Collected
	Receivable	Payable				
1.	12682	12692	12703	12714	12725	12736
2.	12683	12693	12704	12715	12726	12737
3.	12684	12694	12705	12716	12727	12738
4.	12685	12695	12706	12717	12728	12739
5.	12686	12696	12707	12718	12729	12740
6.	12687	12697	12708	12719	12730	12741
7.	12688	12698	12709	12720	12731	12742
8.	12689	12699	12710	12721	12732	12743
9.	12690	12700	12711	12722	12733	12744
10.	12691	12701	12712	12723	12734	12745
Totals:		12702	12713	12724	12735	12746

Name of Firm: _____

As of: _____

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Expires:
Estimated average burden hours per response:

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FOCUS REPORT PART II INSTRUCTIONS

GENERAL INSTRUCTIONS

Who Must File
Filing Requirements
Consolidated Reporting
Currency
Rounding
U.S. Generally Accepted Accounting Principles
Definitions

SPECIFIC INSTRUCTIONS

Cover Page
Statement of Financial Condition
Computation of Net Capital (Filer Authorized to Use Models)
Computation of Net Capital (Filer Not Authorized to Use Models)
Computation of Minimum Regulatory Capital Requirements (Broker-Dealer)
Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer SBSB)
Computation of Tangible Net Worth
Statement of Income (Loss) or Statement of Comprehensive Income
Capital Withdrawals
Capital Withdrawals – Recap
Financial and Operational Data
Computation for Determination of Customer Reserve Requirements
Possession or Control for Customers
Computation for Determination of PAB Requirements
Claiming an Exemption from Rule 15c3-3
Computation for Determination of Security-Based Swap Customer Reserve Requirements
Possession or Control for Security-Based Swap Customers
Computation of CFTC Minimum Capital Requirements
Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges
Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act
Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts
Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7
Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions
Schedule 2 – Credit Concentration Report for Fifteen Largest Exposures in Derivatives
Schedule 3 – Portfolio Summary of Derivatives Exposures by Internal Credit Rating
Schedule 4 – Geographic Distribution of Derivatives Exposures for Ten Largest Countries

Persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number

GENERAL INSTRUCTIONS

FOCUS Report Part II ("Part II") is a report of the U.S. Securities and Exchange Commission ("Commission" or "SEC") that is required to be filed by the following:

- Brokers or dealers ("broker-dealers") registered with the Commission under section 15 of the Securities Exchange Act of 1934 ("Exchange Act") that are subject to paragraph (a)(1)(ii) of Exchange Act Rule 17a-5 or otherwise required to file Part II by their designated examining authority ("DEA") and OTC derivatives dealers subject to paragraph (a)(1)(i) of Exchange Act Rule 17a-12, that are not also registered with the Commission as security-based swap dealers ("SBSDs") or major security-based swap participants ("MSBSPs") under section 15F of the Exchange Act ("stand-alone broker-dealers");
- Broker-dealers that are also registered as SBSDs ("broker-dealer SBSDs");
- Broker-dealers that are also registered as MSBSPs ("broker-dealer MSBSPs");
- SBSDs not also registered with the Commission as broker-dealers or regulated by a prudential regulator ("stand-alone SBSDs");
- MSBSPs not also registered with the Commission as broker-dealers or regulated by a prudential regulator ("stand-alone MSBSPs");
- Futures Commission Merchants

The instructions issued from time to time must be used in preparing Part II and are considered an integral part of this report.

Filing Requirements

Part II must be filed within 17 business days after the end of each calendar quarter, within 17 business days after the end of the fiscal year where that date is not the end of a calendar quarter, and/or monthly, in accordance with 17 CFR 240.17a-5, 17 CFR 240.17a-12, or 17 CFR 240.18a-7, as applicable.

Part II generally must be filed with the firm's DEA, or if none, then with the Commission or its designee. The name of the firm and the report's effective date must be repeated on each sheet of the report submitted. If no response is made to a line item or subdivision of that item, it constitutes a representation that the firm has nothing to report.

Consolidated Reporting

In computing net capital, firms should consolidate their assets and liabilities in accordance with 17 CFR 240.5c3-1c or 18a-1c, as applicable.

Currency

Foreign currency may be expressed in terms of U.S. dollars at the rate of exchange as of the report's effective date and, where carried in conjunction with the U.S. dollar, balances for the same accountholder may be consolidated with U.S. dollar balances and the gross or net position reported in its proper classification, provided the foreign currency is not subject to any restriction as to conversion.

Rounding

As a general rule, money amounts should be expressed in whole dollars. No valuation should be used which is higher than the actual valuation; for example, for \$170,000.85, use \$170,000 but not \$170,001. However, *for any or all-short valuations*, round the valuation *up* to the nearest dollar; for example, for \$180,000.17, use \$180,001 but not \$180,000.

U.S. Generally Accepted Accounting Principles

Financial statements must be prepared in conformity with U.S. generally accepted accounting principles, applied on a basis consistent with that of the preceding report and must include, in the basic statement or accompanying footnotes, all informative disclosures necessary to make the statement a clear expression of the organization's financial and operational condition. The firm must report all data after proper accruals have been made for income and expense not recorded in the books of account and adequate reserves have been provided for deficits in customer or broker accounts, unrecorded liabilities, security differences, dividends and similar items.

The amount of terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing must be disclosed, if significant, in notes to the financial statements.

Definitions

"Alternative standard" refers to the alternative standard for computing net capital based on aggregate debit items, in accordance with 17 CFR 240.15c3-1.

"Aggregate indebtedness" is defined in 17 CFR 240.15c3-1.

"Bona fide arbitrage" is defined in 17 CFR 240.15c3-1.

"Open contractual commitment" is defined in 17 CFR 240.15c3-1.

"Current net exposure" is defined as the net replacement value minus the fair market value of collateral collected that may be applied under applicable rules (e.g., taking into account haircuts to the fair market value of the collateral required under applicable rules).

"Current net and potential exposure" is defined as the sum of the following:

- The current net exposure,
- The amount of initial margin for cleared security-based swaps and swaps required by a clearing agency or derivatives clearing organization (regardless of whether the margin has been collected),
- The "margin amount" for non-cleared security-based swaps calculated under 17 CFR 240.18a-3,
- The "initial margin for non-cleared swaps" calculated under the rules of the Commodity Futures Trading Commission ("CFTC") (regardless of whether the margin has been collected), and
- The "maximum potential exposure" as defined in 17 CFR 240.15c3-1 or 18a-1, as applicable, for any over-the-counter derivatives not included above.

"Customer" and "non-customer" are defined in 17 CFR 240.15c3-1.

"Exempted securities" is defined in section 3 of the Exchange Act.

"Gross replacement value" and "Gross replacement value – receivable" are defined as the amount that would need to be paid to enter into identical contracts with respect to derivatives positions that have a positive mark-to-market value to the firm (i.e., are receivable positions of the firm), without applying any netting or collateral.

"Gross replacement value – payable" is defined as the amount that would need to be paid to enter into identical contracts with respect to derivatives positions that have a negative mark-to-market value to the firm (i.e., are payable positions of the firm), without applying any netting or collateral.

"Margin collected" is defined as the amount of margin collateral collected that can be applied against the firm's current net and potential exposure under applicable rules.

"Mixed swap" is defined in section 3(a)(68)(D) of the Exchange Act.

"Net capital" is defined in 17 CFR 240.15c3-1 or 18a-1, as applicable.

"Net replacement value" is defined as the amount of the "gross replacement value – receivable" minus the amount of the "gross replacement value – payable" that may be netted for each counterparty in accordance with applicable rules.

"Omnibus" refers to an arrangement whereby one firm settles transactions and holds securities in an account on behalf of another firm and its customers. The clearing firm only knows the other firm and does not know the customers of the carrying firm.

"Prudential regulator" is defined in section 3 of the Exchange Act.

"Ready market" is defined in 17 CFR 240.15c3-1 or 18a-1, as applicable.

"Secured demand note" ("SDN") is defined in 17 CFR 240.15c3-1d.

"Securities not readily marketable" is defined in 17 CFR 240.15c3-1 or 18a-1, as applicable.

"Security-based swap" is defined in section 3(a)(68) of the Exchange Act.

"Security-based swap customer" is defined in 17 CFR 240.15c3-3 or 240.18a-4, as applicable.

"Swap" is defined in section 3(a)(69) of the Exchange Act.

SPECIFIC INSTRUCTIONS

Cover Page

The cover page must be completed in its entirety. If a line does not apply, the firm should write "None" or "N/A" on the line, as applicable.

- 13 Name of reporting entity. Provide the name of the firm filing Part II, as it is registered with the Commission. Do not use DBAs or divisional names. Do not abbreviate.
- 20-23, 12008 Address of principal place of business. Provide the physical address (not a post office box) of the firm's principal place of business.
- 30 Name of person to contact in regard to this report. The identified person need not be an officer or partner of the firm, but should be a person who can answer any questions concerning this report.
- 31 (Area code) Telephone no. Provide the direct telephone number of the contact person whose name appears on Line Item 30.
- 32, 34, 36, 38 Name(s) of subsidiaries or affiliates consolidated in this report. Provide the name of the subsidiaries or affiliate firms whose financial and operational data are combined in Part II with that of the firm filing Part II.
- 33, 35, 37, 39 Official use. This item is for use by regulatory staff only (leave it blank).

Statement of Financial Condition

This section must be prepared by stand-alone broker-dealers, stand-alone SBSDs, broker-dealer SBSDs, stand-alone MSBSPs, and broker-dealer MSBSPs. Firms should report their assets as allowable or non-allowable in accordance with 17 CFR 240.15c3-1, 17 CFR 240.18a-1, or 17 CFR 240.18a-2, as applicable. (Stand-alone MSBSPs should only complete the Allowable and Total columns.) With respect to liabilities, the columns titled "A.I. Liabilities" and "Non-A.I. Liabilities" should only be completed by broker-dealers electing to comply with the aggregate indebtedness standard under 17 CFR 240.15c3-1.

- 200 Allowable – cash. Report unrestricted cash balances. Do not report:
- Bank-negotiable certificates of deposits or similar bank money market instruments.
 - Petty cash.
 - Cash used to collateralize bank loans or other similar liabilities (compensating balances).
 - Overdrafts in unrelated banks.
- 210 Allowable – cash segregated in compliance with federal and other regulations. Report cash segregated pursuant to federal or state statutes or regulations, or the requirements of any foreign government or instrumentality of that government.
- 220 Allowable – receivables from brokers/dealers and clearing organizations – failed to deliver – includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a. Do not report continuous net settlement ("CNS") fails to deliver here. Report them on Line Item 280.
- 230 Allowable – receivables from brokers/dealers and clearing organizations – failed to deliver – other. Do not report CNS fails to deliver here. Report them on Line Item 290.
- 260 Allowable – receivables from brokers/dealers and clearing organizations – omnibus accounts – includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a or the Commodity Exchange Act ("CEA"). If applicable, report here net ledger balances and losses and gains on commodities future contracts.
- 270 Allowable – receivables from brokers/dealers and clearing organizations – omnibus accounts – other. If applicable, report here net ledger balances and losses and gains on commodities future contracts.
- 280 Allowable – receivables from brokers/dealers and clearing organizations – clearing organizations – includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a or the CEA. Report CNS fails to

- deliver allocating to customers here. CNS balances may be reported on a net basis by category (i.e., customer, non-customer).
- 290 Allowable – receivables from brokers/dealers and clearing organizations – clearing organizations – other. Report CNS fails to deliver here. CNS balances may be reported on a net basis by category (i.e., customer, non-customer). Report deposits of cash with clearing organizations.
- 292 Allowable – trade date receivable. Report pending or unsettled trades that net to a receivable balance, as of trade date, across all counterparties.
- 300 Allowable – receivables from brokers/dealers and clearing organizations – other. Report other allowable receivables from brokers/dealers and clearing organizations, including floor brokerage, commissions, trade date adjustment, and all other allowable gross receivables from brokers/dealers and clearing organizations not already reported.
- 320 Allowable – receivables from customers – securities accounts – partly secured accounts. Report those portions of partly secured customer accounts that have been secured by securities deemed to have a ready market. The remaining portion of the ledger debit balance is considered nonallowable; report it as partly secured customer receivables (Line Item 560).
- 360 Allowable – securities purchased under agreements to resell. Report the gross contract value receivable (contract price) of reverse repurchase agreements that are deemed to be adequately secured. Contract price includes accrued interest on the contract at the repurchase agreement's rate (not the underlying securities). Buy-sell agreements are considered financing transactions and are reported on this line item. If a firm does not take possession of the collateral securing a reverse repurchase agreement, it will be treated as a nonallowable asset and reported on Line Item 605. Reverse repurchase deficits (including buy-sell deficits) should be reported on Line Item 3610.
- 480 Allowable – investment in and receivables from affiliates, subsidiaries and associated partnerships. This amount should not be netted against a payable from different affiliates, subsidiaries, and associated partnerships.
- 500 Allowable – other assets – dividends and interest receivable. Dividends receivable and payable should not be netted; they should be recorded in separate accounts.
- 520 Allowable – other assets – loans and advances. Report amounts related to loans and advances made to employees and others that are secured by readily marketable securities, and meet the margin requirements of Regulation T (12 CFR 220), 17 CFR 240.18a-3, and/or the firm's DEA, as applicable. Do not report loans and advances to partners, directors, and officers. Report them in the appropriate category under "Receivable from non-customers", on either Line Item 340 or Line Item 350.
- 530 Allowable – other assets – miscellaneous. Report allowable assets not readily classifiable into other previously identified categories. Examples of assets reported on this line item include: future income tax benefits arising as a result of unrealized losses; good faith deposits; and deferred organization expenses, prepaid expenses, and deferred charges.
- 536 Allowable – other assets – collateral accepted under ASC 860. Report here the market value of securities received that are required to be reported under ASC 860.
- Securities held as collateral for stock loan transactions are recognized as both an asset (Securities accepted under ASC 860 (Line Item 536)) and as a liability (Obligation to return securities (Line Item 1686)).
- Example: A firm loans 100 shares of stock valued at \$1050 and receives stock collateral valued at \$1000. The market value of the collateral received should be reported on the FOCUS as follows:
- | | | | |
|--------|-----------------|-----------------------------------|--------|
| Debit | FOCUS Item 536 | Securities accepted under ASC 860 | \$1000 |
| Credit | FOCUS Item 1686 | Obligation to return securities | \$1000 |
- 537 Allowable – other assets – SPE assets. Report here financial assets that were previously transferred to a special purpose entity ("SPE") that do not qualify for sale treatment under ASC 860. Financial assets that have been transferred to a qualifying SPE do not need to be reported on Part II. Financial assets that have been transferred to a SPE that is not a qualifying SPE fail to qualify for sale treatment generally because effective control over the assets is still maintained.
- 550 Nonallowable – receivables from brokers/dealers and clearing organizations – other. Report nonallowable or aged receivables from brokers/dealers and clearing organizations including floor brokerage, commissions, trade date adjustment,

and all other nonallowable gross receivables from brokers/dealers and clearing organizations not already reported. Do not net unrelated receivables versus payables.

- 560 Nonallowable – receivables from customers – securities accounts – partly secured accounts. Report those portions of partly secured customer accounts that have not been secured by securities deemed to have a ready market. See 17 CFR 240.15c3-1 or 17 CFR 240.18a-1, as applicable. Report deficits in partly secured accounts of the introducing firm. Both the carrying broker and the introducing broker must report this if their clearing agreement states that such deficits are the liability of the introducing broker.
- 605 Nonallowable – securities purchased under agreements to resell. Report the gross contract value receivable (contract price) of reverse repurchase agreements that are not deemed to be adequately secured. If collateral that secures a reverse repurchase receivable is non-marketable or illiquid, then the amount receivable is nonallowable and should be reported here. Contract price includes accrued interest on the contract at the repurchase agreement's rate (not the underlying securities).
- 670 Nonallowable – investment in and receivables from affiliates, subsidiaries and associated partnerships. This amount should not be netted against payables from different affiliates or subsidiaries.
- 690 Nonallowable – other assets – dividends and interest receivable. Dividends receivable and payable are not to be netted; they should be recorded in separate accounts.
- 710 Nonallowable – other assets – loans and advances. Do not report unsecured loans and advances to partners, directors, and officers. Report them on Line Item 600.
- 750 Total – cash. This line item is equal to Line Item 200.
- 760 Total – cash segregated in compliance with federal and other regulations. This line item is equal to Line Item 210.
- 770 Total – receivables from brokers/dealers and clearing organizations – failed to deliver. This line item is the sum of Line Items 220 and 230.
- 780 Total – receivables from brokers/dealers and clearing organizations – securities borrowed. This line item is the sum of Line Items 240 and 250.
- 790 Total – receivables from brokers/dealers and clearing organizations – omnibus accounts. This line item is the sum of Line Items 260 and 270.
- 800 Total – receivables from brokers/dealers and clearing organizations – clearing organizations. This line item is the sum of Line Items 280 and 290.
- 802 Total – trade date receivable. This line item is equal to Line Item 292.
- 810 Total – receivables from brokers/dealers and clearing organizations – other. This line item is the sum of Line Items 300 and 550.
- 820 Total – receivables from customers. This line item is the sum of Line Items 310, 320, 330, 335, 560, 570, 580, and 590.
- 830 Total – receivables from non-customers. This line item is the sum of Line Items 340, 350, and 600.
- 840 Total – securities purchased under agreements to resell. This line item is the sum of Line Items 360 and 605.
- 880 Total – securities borrowed under subordination agreements and partners' individual and capital securities accounts. This line item is the sum of Line Items 460 and 630.
- 890 Total – secured demand notes. This line item is the sum of Line Items 470 and 640.
- 900 Total – memberships in exchanges. This line item is the sum of Line Items 650 and 660.
- 910 Total – investment in and receivables from affiliates, subsidiaries and associated partnerships. This line item is the sum of Line Items 480 and 670.
- 920 Total – property, furniture, equipment, leasehold improvements, and rights under lease agreements. This line item is the sum of Line Items 490 and 680.
- 930 Total – other assets. This line item is the sum of Line Items 500, 510, 520, 530, 536, 537, 690, 700, 710, and 720.

- 940 Total – assets. This line item is the sum of Line Items 540 and 740.
- 950 Payable to customers – securities accounts – including free credits. Do not report here funds in commodity accounts segregated in accordance with the Commodity Exchange Act. Do not report credits related to short sales of securities.
- 970 Liabilities subordinated to claims of creditors – cash borrowings – from outsiders. Report that portion of subordinated liabilities (cash borrowings) reported on Line Item 1710 that are owed to the firm's non-partners, non-members, or non-stockholders (outsiders).
- 980 Liabilities subordinated to claims of creditors – cash borrowings – includes equity subordination. Report that portion of subordinated liabilities (cash borrowings) reported on Line Item 1710 that are considered equity pursuant to 17 CFR 240.15c3-1 or 17CFR 240.18a-1, as applicable, for debt to debt-equity requirements. See also 17 CFR 240.15c3-1d and 17 CFR 240.18a-1d regarding events of acceleration and default.
- 990 Liabilities subordinated to claims of creditors – securities borrowings – from outsiders. This amount represents that portion of Line Item 1720 that is securities borrowing from the firm's non-partners, non-members, or non-stockholders (outsiders).
- 1000 Liabilities subordinated to claims of creditors – pursuant to secured demand note collateral agreements – from outsiders. Report that portion of liabilities subordinated pursuant to SDN collateral agreements (Line Item 1730) that are owed to the firm's non-partners, non-members, or non-stockholders (outsiders).
- 1010 Liabilities subordinated to claims of creditors – pursuant to secured demand note collateral agreements – includes equity subordination. Report that portion of liabilities subordinated pursuant to SDN collateral agreements (Line Item 1730) that are considered equity pursuant to 17CFR 240.15c3-1 or 17 CFR 240.18a-1, as applicable, for debt to debt-equity requirements. See also 17 CFR 240.15c3-1d and 17 CFR 240.18a-1d regarding events of acceleration and default.
- 1020 Partnership and LLC – including limited partners/members. Report that portion of Line Item 1780 that represents the capital contributions of limited partners/members to the limited partnership/limited liability company.
- 1480 Securities sold under repurchase agreements. Report here the gross contract value (contract price) of securities sold under repurchase agreements. Contract price includes accrued interest on the contract at the repurchase agreement's rate (not the underlying securities). Buy-sell agreements resembling repurchase agreements are also reported here.
- 1490 Payable to brokers/dealers and clearing organizations – failed to receive – includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a. Do not report here CNS failed to receive relating to customers. Report them on Line Item 1550.
- 1500 Payable to brokers/dealers and clearing organizations – failed to receive – other. Do not report here CNS failed to receive relating to non-customers. Report them on Line Item 1560.
- 1530 Payable to brokers/dealers and clearing organizations – omnibus accounts – includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a, or the CEA. Report here customer-related credit balances in accounts carried by other firms pursuant to omnibus agreements.
- 1540 Payable to brokers/dealers and clearing organizations – omnibus accounts – other. Report here non-customer and proprietary-related credit balances in accounts carried by other firms pursuant to omnibus agreements. FCMs should also report on this line item omnibus accounts used to clear proprietary and non-customer accounts that liquidate to a deficit (payable to the other FCM). An omnibus account that the reporting FCM carries at another FCM liquidating to a deficit should not be netted against omnibus accounts that liquidate to an equity.
- 1550 Payable to brokers/dealers and clearing organizations – clearing organizations – includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a, or the CEA. CNS fails to receive allocating to customers are also included on this line item. CNS balances may be reported on a net basis by category (customers or non-customers); however, they should be allocated broadly for purposes of the formulas under 17 CFR 240.15c3-3a, 17 CFR 240.18a-4a, and the Commodity Exchange Act.
- 1560 Payable to brokers/dealers and clearing organizations – clearing organizations – other. CNS balances may be reported on a net basis by category (customers or non-customers).

- 1562 Trade date payable. Report here pending or unsettled trades that net to a payable balance as of trade date, across all counterparties.
- 1570 Payable to brokers/dealers and clearing organizations – other. Report here all other payables to broker/dealers including commissions, floor brokerage, and trade date or settlement date adjustments. When a firm is required to prepare its net capital computation on a trade date basis, any net receivables (or payables) resulting from adjusting proprietary positions to reflect the trade date basis of accounting should be reported here. Do not net payables and receivables with unrelated entities.
- 1686 Accounts payable and accrued liabilities and expenses – obligation to return securities. Report here the market value of securities that are required to be reported pursuant to ASC 860. Report here the market value of securities received in a stock loan transaction in which the firm lent out one security and received another security in lieu of cash.
- 1687 Accounts payable and accrued liabilities and expenses – SPE liabilities. Report here liabilities of SPEs that offset financial assets previously transferred to the SPE that do not qualify for sale treatment under ASC 860. Liabilities reported here contrast with the assets reported on Line Item 537.
- 1710 Liabilities subordinated to claims of creditors – cash borrowings. SBSBs should report here cash borrowings that are subordinated to the claims of creditors, and meet the minimum requirements of 17 CFR 240.15c3-1d or 17 CFR 240.18a-1d, if applicable. These liabilities are added to net worth in the computation of net capital (see Line Item 3520).

Computation of Net Capital (Filer Authorized to Use Models)

This section must be prepared by stand-alone broker-dealers, stand-alone SBSBs, broker-dealer SBSBs, and broker-dealer MSBSPs that are authorized by the Commission to calculate net capital using internal models in accordance with 17 CFR 240.15c3-1e and 240.18a-1(d), as applicable. Firms using the value at risk (VaR) model to compute market risk exposure should complete Line 9, while firms using Basel 2.5's standards to compute market risk exposure should complete Line 10.

- 3490 Deduct ownership equity not allowable for net capital. Report as a deduction any capital accounts, included as part of ownership equity on the Statement of Financial Condition, that are not allowable in the determination of net capital (i.e., partners' securities contributed to the firm through their individual and capital accounts).

- 3525 Other (deductions) or allowable credits. Report deductions or addbacks that are net of any related tax benefit.

Reported amounts must also be reported on the section titled "Capital Withdrawals."

Do not deduct from net worth or include in aggregate indebtedness any net receivables or payables resulting from the recording of proprietary positions on a trade date basis.

- 3610 Other deductions and/or charges. These charges include the following:

- Securities borrowed deficits,
- Stock loan deficits,
- Repurchase and reverse repurchase deficits,
- Aged fail-to-receive,
- The 1% deduction for fails to deliver and stock borrows allocating to fails to receive that have been excluded from the customer reserve or deposit requirement formula, as applicable,
- Other operational charges not comprehended elsewhere, and
- The 1% deduction for stock borrows collateralized by an irrevocable letter of credit.

- 3630 Other additions and/or allowable credits. Report adjustments to ownership equity related to unrealized profit or loss and to deferred tax provisions, pursuant to 17 CFR 240.15c3-1 or 17 CFR 240.18a-1, as applicable. Report also any flow-through capital that has been approved by the Commission pursuant to 17 CFR 240.15c3-1c, if applicable.

Unrealized losses on open contractual commitments are treated as charges when computing the net worth and the debt/equity total. See 17 CFR 240.15c3-1 or 17 CFR 240.18a-1, as applicable. Unrealized profits on open contractual commitments are allowed to reduce haircuts, but not to otherwise increase net worth or net capital.

- 3665 Residual marketable securities. This line item should include contractual securities commitments not accounted for in the firm's VaR model.

Computation of Net Capital (Filer Not Authorized to Use Models)

This section must be prepared by stand-alone broker-dealers, stand-alone SBSBs, broker-dealer SBSBs, and broker-dealer MSBSPs that are not authorized by the Commission to calculate net capital using internal models in accordance with 17 CFR 240.15c3-1e or 17 CFR 240.18a-1(d), as applicable.

Follow the instructions in the immediately preceding section titled "Computation of Net Capital (Filer Authorized to Use Models)" to the extent it contains instructions corresponding with the applicable line item number (unless contrary instructions are provided below).

3732 Haircuts on securities – arbitrage. Report the deduction applied to securities considered part of a bona fide arbitrage, pursuant to 17 CFR 240.15c3-1 or 17 CFR 240.18a-1, as applicable.

3734 Haircuts on securities – other securities. This line item should include deductions applied to securities of an investment company registered under the Investment Company Act of 1940.

3736 Haircuts on securities – other. The deductions reported here should include charges related to foreign currency exposure or charges related to swaps that are not computed under 17 CFR 240.15c3-1a or 17 CFR 240.18a-1a. Haircuts on swaps computed under 17 CFR 240.15c3-1a or 17 CFR 240.18a-1a should be reported on Line Item 12028.

Computation of Minimum Regulatory Capital Requirements (Broker-Dealer)

This section must be prepared by stand-alone broker-dealers, broker-dealer SBSBs, and broker-dealer MSBSPs. The calculation of excess tentative net capital should only be completed by broker-dealers that are authorized to calculate net capital using internal models.

3870 Ratio requirement – 2% of aggregate debit items. FCMs must report here the greater of:

- 2% of aggregate debit items, or
- 8% of funds required to be segregated pursuant to the Commodity Exchange Act.

Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer SBSB)

This section must be prepared by stand-alone SBSBs. The calculation of excess tentative net capital should only be completed by stand-alone SBSBs that are authorized to calculate net capital using internal models.

Computation of Tangible Net Worth

This section must be prepared by stand-alone MSBSPs.

Statement of Income (Loss) or Statement of Comprehensive Income (as defined in § 210.1-02 of Regulation S-X), as applicable

This section must be prepared by stand-alone broker-dealers, stand-alone SBSBs, broker-dealer SBSBs, stand-alone MSBSPs, and broker-dealer MSBSPs.

If there are no items of other comprehensive income in the period presented, the firm is not required to report comprehensive income.

Commissions. Commission earned on equity, debt and commodity transactions including non-inventory principal transactions. Commission earned on introduced accounts carried by other broker-dealers and on omnibus accounts carried for other broker-dealers should be reported net.

Underwriting. Gross profit from underwriting transactions shall be determined as the difference between the proceeds of securities sold and their purchase price adjusted for discounts, commissions and allowances received from or given to other broker-dealers.

Any direct expense which can be associated with a specific underwriting may also be considered as a cost in determining gross profit or loss. In determining gross profit or loss any unrealized loss on securities unsold at the time the underwriting account was closed shall be considered as a deduction from the proceeds of securities sold.

In addition, report all fees earned from private placements, mergers and acquisitions and any other underwriting activity.

Interest and dividends. Report interest and dividend income earned on firm trading and investment accounts. Also report gross interest earned on customers' securities and commodities accounts.

Income from sale of investment company shares. Include income from sale of open-end investment company shares as retailer and as an underwriter including sales of periodic payment plans of the installment type and face amount certificates. Exclude income from sale and underwriting of shares of closed-end investment companies.

Other income. Report all other income including sale of investment company securities, investment advisory fees, proxy solicitation fees, service charges (including custodial fees), fees in connection with option transactions not excluded on an exchange, fees for solicitation of tenders on exchanges of securities, income from sale of insurance policies and all other income not specified above.

Employee compensation and benefits. Report all salaries, commissions, bonuses, profit sharing contributions, payroll taxes and benefits paid to or incurred for all employees of the reporting organization.

Commissions and floor brokerage. Include security and commodity commissions paid to others; clearance fees paid to clearing corporations, associations and depositories; fees paid to exchanges and floor brokerage paid to other broker-dealers.

Communications. Include the cost of telephones and leases wires, tickers and quotation equipment, postage, stationery, office supplies and forms.

Occupancy and equipment rental. Enter the cost of rent, heat, light and maintenance; depreciation and amortization; EDP equipment, rental and service bureau charges; all other equipment rental and general insurance.

Interest. Include interest paid to banks and on customers' accounts; on all other un-subordinated and subordinated borrowings.

Taxes other than income taxes. Include real estate taxes, personal property taxes, commercial rent and occupancy taxes, etc.

Other operating expenses. Report cost incurred for advertising, sales literature and promotional activities; travel and entertainment; subscriptions to periodicals, dues and assessments, losses in error accounts and bad debt, professional fees and all other expenses not specified above.

Income taxes. Include all unincorporated business taxes, franchise taxes, state and local income taxes and federal income taxes paid, accrued or refunded.

Equity in earnings of unconsolidated subsidiaries. The amount reported shall be stated net of any applicable tax provisions.

Comprehensive income. Comprehensive income is defined in § 210.1-02 of Regulation S-X.

Capital Withdrawals

This section must be prepared by stand-alone broker-dealers, stand-alone SBSDs, broker-dealer SBSDs, and broker-dealer MSBSPs.

Name of lender or contributor. Report the name of the lender or contributor to whom the scheduled liability relates (i.e., name of partner, shareholder or subordinated lender). If an amount reported in this column relates to a discretionary liability or other addback to capital, include a description of the addback (i.e., "discretionary liability").

Amount to be withdrawn. These amounts can include:

- Equity capital that the firm expects to distribute within the next six months;
- Subordinated liabilities that are scheduled to mature within the next six months;
- Accruals and other addbacks to net capital that will not be eligible for inclusion in net capital within the next six months.

Capital Withdrawals – Recap

This section must be prepared by stand-alone broker-dealers, stand-alone SBSDs, broker-dealer SBSDs, and broker-dealer MSBSPs.

With respect to Lines 1 through 4, report equity and subordinated liabilities maturing or proposed to be withdrawn within the next six months and accruals which have not been deducted in the computation of net capital.

Financial and Operational Data

This section must be prepared by stand-alone broker-dealers, stand-alone SBSs, broker-dealer SBSs, and broker-dealer MSBSPs. In addition to the specific instructions below, firms should refer to the instructions accompanying Notes A and B of this section on Part II itself.

- 4980 Actual number of tickets executed during the reporting period. For agency transactions, count both street side and customer side as one transaction. Count as one transaction multiple executions at the same price that result in one confirmation. In the case of principal transactions, count separately dealer-to-dealer and retail transactions. Carrying and clearing firms should include in the total ticket count transactions emanating from those firms for whom they clear on a fully disclosed basis. Firms that introduce accounts on a fully disclosed basis should include transactions introduced in their ticket count.
- 4990 Number of corrected customer confirmations sent after settlement date. Include confirmations for which the incorrect original was sent to the customer. Consider individually multiple corrections on confirmations.
- 5374 Customers' and security-based swap customers' accounts under Rules 15c3-3 or 18a-4, as applicable. Report the aggregate market value of specific securities, other than exempted securities, which exceeds 15% of the value of all securities which collateralize all margin receivables pursuant to Note E to 17 CFR 240.15c3-3a or Note E to 17 CFR 240.18a-1a, as applicable.
- 5378 Total of personal capital borrowings due within six months. Report the total borrowed cash and/or securities that, in computing net capital, are included as proprietary capital or subordinated debt.
- 5760 Open transfers and reorganization account items over 40 days not confirmed or verified – number of items. The term "reorganization account items" includes, but is not limited to, transactions in the following: (1) "rights" subscriptions, (2) warrants exercised, (3) stock splits, (4) redemptions, (5) conversions, (6) exchangeable securities, and (7) spin-offs.
- 5820 Security suspense and differences with related money balances – long – debits. When computing net capital, regard short positions and related credits as proprietary commitments if they remain unresolved seven business days after discovery.
- 5825 Security suspense and differences with related money balances – short – debits. When computing net capital, regard long positions and related debits as proprietary commitments if they remain unresolved seven business days after discovery.
- 5830 Market value of short and long security suspense and differences without related money – debits. When computing net capital, regard the market value of short security differences as deductions if they remain unresolved seven business days after discovery. Do not net unrelated differences in the same security or in other securities.
- 5840 Market value of security record breaks – debits. Report the market values of short security record breaks that are unresolved seven business days after discovery.
- 5850 Correspondents, broker-dealers, SBSs, and MSBSPs – long – debits. Report here the debit amount applicable to all unresolved reconciling items (favorable or unfavorable) with correspondents, broker-dealers, SBSs, and/or MSBSPs that are long and unresolved within seventeen business days from record date. Do not net these items.
- 5855 Correspondents, broker-dealers, SBSs, and MSBSPs – short – debits. Report here the debit amount applicable to all unresolved reconciling items (favorable or unfavorable) with correspondents, broker-dealers, SBSs, and/or MSBSPs that are short and unresolved within seventeen business days from record date. Do not net these items.
- 5860 Depositories – debits. Report here the debit amount or short value applicable to all unresolved reconciling items (favorable or unfavorable) with depositories that are unresolved within seven business days from the date of receipt of the statement of account from the carrying entity. Do not net these items.
- 5870 Clearing organizations – long – debits. Report here the debit amount applicable to all unresolved reconciling items (favorable or unfavorable) with clearing organizations that are long and unresolved within seven business days from the date of receipt of the statement of account from the carrying entity. Do not net these items.
- 5875 Clearing organizations – short – debits. Report here the debit value applicable to all unresolved reconciling items (favorable or unfavorable) with clearing organizations that are short and unresolved within seven business days from the date of receipt of the statement of account from the carrying entity. Do not net these items.
- 6012 Money suspense and balancing differences – deductions. A difference, open at the report date and unresolved for seven business days after discovery, must be deducted regardless of whether the difference is resolved prior to Part II's filing date.

- 6020 Security suspense and differences with related money balances – long – credits. When computing net capital, regard long positions and related credits as proprietary commitments if they remain unresolved seven business days after discovery.
- 6025 Security suspense and differences with related money balances – short – credits. When computing net capital, regard long positions and related credits as proprietary commitments if they remain unresolved seven business days after discovery.
- 6040 Market value of security record breaks – credits. Report the market values of long security record breaks that are unresolved seven business days after discovery.
- 6042 Market value of security record breaks – deductions. The market values of short security record breaks are deductions to net capital only if they remain unresolved seven business days after discovery.
- 6050 Correspondents, broker-dealers, SBSBs, and MSBSPs – long – credits. Report here the credit amount applicable to all unresolved reconciling items (favorable or unfavorable) with correspondents, broker-dealers, SBSBs, and/or MSBSPs that are long and unresolved within seventeen business days from record date.
- 6055 Correspondents, broker-dealers, SBSBs, and MSBSPs – short – credits. Report here the credit amount applicable to all unresolved reconciling items (favorable or unfavorable) with correspondents, broker-dealers, SBSBs, and/or MSBSPs that are short and unresolved within seventeen business days from record date. Do not net these items.
- 6060 Depositories – credits. Report here the credit amount or long value applicable to all unresolved reconciling items (favorable or unfavorable) with depositories that are unresolved within seven business days from the date of receipt of the statement of account from the carrying entity. Do not net these items.
- 6070 Clearing organizations – long – credits. Report here the credit amount applicable to all unresolved reconciling items (favorable or unfavorable) with clearing organizations that are long and unresolved within seven business days from the date of receipt of the statement of account from the carrying entity. Do not net these items.
- 6075 Clearing organizations – short – credits. Report here the credit value applicable to all unresolved reconciling items (favorable or unfavorable) with clearing organizations that are short and unresolved within seven business days from the date of receipt of the statement of account from the carrying entity. Do not net these items.
- 6160 Open transfers and reorganization account items over 40 days not confirmed or verified – credits. Report here credits relating to open transfers and reorganization account items that have not been confirmed or verified for over forty days. See the instructions accompanying Line Item 5760 for a discussion of the term "reorganization account items."
- 6162 Open transfers and reorganization account items over 40 days not confirmed or verified – deductions. Report here the total deductions relating to open transfers and reorganization account items that have not been confirmed or verified for over forty days. See the instructions accompanying Line Item 5760 for a discussion of the term "reorganization account items."
- 6182 Aged fails to deliver – deductions. Report deductions for fails to deliver that are five business days or longer (or 21 business days for municipal securities).
- 6187 Aged fails to receive – deductions. Report deductions for fails to receive that are outstanding for more than 30 calendar days.

Computation for Determination of Customer Reserve Requirements

This section must be prepared by stand-alone broker-dealers, broker-dealer SBSBs, and broker-dealer MSBSPs that are subject to Rule 15c3-3. See also the notes accompanying 17 CFR 240.15c3-3a.

Note that broker-dealer SBSBs must also complete the "Computation for Determination of Security-Based Swap Customer Reserve Requirements" with regard to security-based swap customers' accounts (while limiting this calculation under 17 CFR 240.15c3-3a to customers' accounts). The term "customer" is defined in 17 CFR 240.15c3-3.

Possession or Control for Customers

This section must be prepared by stand-alone broker-dealers, broker-dealer SBSBs, and broker-dealer MSBSPs.

Note that broker-dealer SBSBs must also complete Possession or Control for Security-Based Swap Customers with regard to security-based swap customers' security-based swap customers (while limiting this calculation to security customers).

Computation for Determination of PAB Requirements

This section must be prepared by stand-alone broker-dealers, broker-dealer SBSBs, and broker-dealer MSBSPs.

Claiming an Exemption from Rule 15c3-3

This section must be prepared by stand-alone broker-dealers, broker-dealer SBSBs, and broker-dealer MSBSPs that are claiming an exemption from Rule 15c3-3.

Computation for Determination of Security-Based Swap Customer Reserve Requirements

This section must be prepared by stand-alone broker-dealers, stand-alone SBSBs, and broker-dealer SBSBs. Stand-alone SBSBs that are exempt from 17 CFR 240.18a-4 are not required to complete this section. See also the notes accompanying 17 CFR 240.15c3-3a and 17 CFR 240.18a-4a, as applicable.

Note that broker-dealer SBSBs must also complete the "Computation for Determination of Customer Reserve Requirements" with regard to customers' accounts (while limiting this calculation to security-based swap customers' accounts).

Possession or Control for Security-Based Swap Customers

This section must be prepared by stand-alone broker-dealers, stand-alone SBSBs, and broker-dealer SBSBs. Stand-alone SBSBs that are exempt from 17 CFR 240.18a-4 are not required to complete this section.

Note that broker-dealer SBSBs must also complete Possession or Control for Customers with regard to customers' security customers (while limiting this calculation under 17 CFR 240.18a-4a to security-based swap customers).

Computation of CFTC Minimum Capital Requirements

This section must be prepared by nonbank broker-dealers, SBSBs, and MSBSPs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act.

This section should be prepared in accordance with the Commodity Futures Trading Commission's Form 1-FR-FCM ("CFTC Instructions").

Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges

This section must be prepared by nonbank broker-dealers, SBSBs, and MSBSPs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act.

This section should be prepared in accordance with the CFTC Instructions.

Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act

This section must be prepared by nonbank broker-dealers, SBSBs, and MSBSPs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act.

This section should be prepared in accordance with the CFTC Instructions.

Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts

This section must be prepared by nonbank broker-dealers, SBSBs, and MSBSPs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act.

This section should be prepared in accordance with the CFTC Instructions.

Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7

This section must be prepared by nonbank broker-dealers, SBSBs, and MSBSPs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act.

This section should be prepared in accordance with the CFTC Instructions.

Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions

This schedule must be prepared by stand-alone broker-dealers, stand-alone SBSBs, broker-dealer SBSBs, stand-alone MSBSPs, and broker-dealer MSBSPs.

For security-based swaps, mixed swaps, and swaps, report the month-end gross replacement value for cleared and non-cleared receivables in the long/bought column, and report the month-end gross replacement value for cleared and non-cleared payables in the short/sold column. Report totals on the "Total" row. The long/bought total in Schedule 1 (Line Item 8370) should equal total net securities, commodities, and swap positions in the assets section of the Statement of Financial Condition (Line Item 12024). The short/sold total in Schedule 1 (Line Item 8371) should equal total net securities, commodities, and swap positions in the liabilities section of the Statement of Financial Condition (Line Item 12044).

Terms may be defined by reference to other sections of the instructions accompanying Part II.

Schedule 2 – Credit Concentration Report for Fifteen Largest Exposures in Derivatives

This schedule must be prepared by stand-alone broker-dealers that are authorized by the Commission to calculate net capital using internal models in accordance with 17 CFR 240.15c3-1e, and all stand-alone SBSBs, broker-dealer SBSBs, stand-alone MSBSPs, and broker-dealer MSBSPs.

On the next to last row of each table, titled "All other counterparties," report the requested information for all of the firm's counterparties except for the fifteen counterparties already listed on the applicable table.

Counterparty identifier. In the first table, list the fifteen counterparties to which the firm has the largest current net exposure, beginning with the counterparty to which the firm has the largest current net exposure.

In the second table, list the fifteen counterparties for which the firm has the largest current net and potential exposure, beginning with the counterparty for which the firm has the largest current net and potential exposure.

Identify each counterparty by its unique counterparty identifier.

Gross replacement value – receivable. For the applicable counterparty, report here the gross replacement value of the firm's derivatives receivable positions. Report total on the "Totals" row.

Gross replacement value – payable. For the applicable counterparty, report here the gross replacement value of the firm's derivatives payable positions. Report total on the "Totals" row.

Net replacement value. For the applicable counterparty, report here the net replacement value of the firm's derivative positions. Report total on the "Totals" row.

Current net exposure. For the applicable counterparty, report here the firm's current net exposure to derivative positions. Report total on the "Totals" row.

Current net and potential exposure. For the applicable counterparty, report here the firm's current and potential exposure to derivative positions. Report total on the "Totals" row.

Margin collected. For the applicable counterparty, report here the margin collected to cover the firm's derivative positions. Report total on the "Totals" row.

Schedule 3 – Portfolio Summary of Derivatives Exposures by Internal Credit Rating

This schedule must be prepared by stand-alone broker-dealers that are authorized by the Commission to calculate net capital using internal models in accordance with 17 CFR 240.15c3-1e, and all stand-alone SBSBs, broker-dealer SBSBs, stand-alone MSBSPs, and broker-dealer MSBSPs.

Internal credit rating. Report here the firm's internal credit rating scale. Each row should contain a separate symbol, number, or score in the firm's rating scale to denote a credit rating category and notches within a category in descending order from the highest to the lowest notch. For example, the following symbols would each represent a notch in a rating scale in descending order: AAA, AA+, AA, AA-, A+, A, A-, BBB+, BBB, BBB-, BB+, BB, BB-, CCC+, CCC, CCC-, CC, C and D.

Gross replacement value – receivable. For the applicable internal credit rating notch, report here the gross replacement value of the firm's derivatives receivable positions with counterparties rated at that notch. Report total on the "Totals" row.

Gross replacement value – payable. For the applicable internal credit rating notch, report here the gross replacement value of the firm's derivatives payable positions with counterparties rated at that notch. Report total on the "Totals" row.

Net replacement value. For the applicable internal credit rating notch, report here the net replacement value of the firm's derivative

positions with counterparties rated at that notch. Report total on the "Totals" row.

Current net exposure. For the applicable internal credit rating notch, report here the firm's current net exposure to derivative positions with counterparties rated at that notch. Report total on the "Totals" row.

Current net and potential exposure. For the applicable internal credit rating notch, report here the firm's current net and potential exposure to derivative positions with counterparties rated at that notch. Report total on the "Totals" row.

Margin collected. For the applicable internal credit rating notch, report here the margin collected to cover the firm's derivative positions with counterparties rated at that notch. Report total on the "Totals" row.

Schedule 4 – Geographic Distribution of Derivatives Exposures for Ten Largest Countries

This schedule must be prepared by stand-alone broker-dealers that are authorized by the Commission to calculate net capital using internal models in accordance with 17 CFR 240.15c3-1e, and all stand-alone SBSBs, broker-dealer SBSBs, stand-alone MSBSPs, and broker-dealer MSBSPs.

Country. Identify the 10 largest countries according to the firm's current net exposure or current net and potential exposure in derivatives. In the first table, countries should be ordered according to the size of the firm's current net exposure in derivatives to them (beginning with the largest and ending with the smallest). In the second table, countries should be ordered according to the size of the firm's current net and potential exposure in derivatives to them (beginning with the largest and ending with the smallest). A firm's counterparty is deemed to reside in the country where its main operating company is located.

Gross replacement value – receivable. For the applicable country, report here the gross replacement value of the firm's derivatives receivable positions. Report total on the "Totals" row.

Gross replacement value – payable. For the applicable country, report here the gross replacement value of the firm's derivatives payable positions. Report total on the "Totals" row.

Net replacement value. For the applicable country, report here the net replacement value of the firm's derivative positions. Report total on the "Totals" row.

Current net exposure. For the applicable country, report here the firm's current net exposure to derivative positions. Report total on the "Totals" row.

Current net and potential exposure. For the applicable country, report here the firm's current net and potential exposure to derivative positions. Report total on the "Totals" row.

Margin collected. For the applicable country, report here the margin collected to cover the firm's derivative positions. Report total on the "Totals" row.

22. Part IIC of Form X-17A-5 and the instructions thereto (referenced in § 249.617 of this chapter) are added to read as follows:

Note: The text of Part IIC of Form X-17A-5 and the instructions thereto will not appear in the Code of Federal Regulations.

(Please read instructions before preparing Form)

This report is being filed by an:

- 1) SBSB with a prudential regulator (bank SBSB)..... 12758
- 2) MSBSP with a prudential regulator (bank MSBSP)..... 12759

This report is being filed by a:

U.S. person 12760 Non-U.S. person 12761

This report is being filed pursuant to (check applicable block(s)):

- 1) Special request by the Commission..... 19
- 2) Rule 18a-7..... 12762
- 3) Other (explain: _____)..... 26

NAME OF REPORTING ENTITY	SEC FILE NO.
ADDRESS OF PRINCIPAL PLACE OF BUSINESS (Do not use P.O. Box No.)	FIRM ID NO.
(No. and Street)	FOR PERIOD BEGINNING (MM/DD/YY)
(City) (State/Province) (Zip Code)	AND ENDING (MM/DD/YY)
(Country)	

NAME OF PERSON TO CONTACT IN REGARD TO THIS REPORT	EMAIL ADDRESS	(AREA CODE) TELEPHONE NO.
NAME(S) OF SUBSIDIARIES OR AFFILIATES CONSOLIDATED IN THIS REPORT	OFFICIAL USE	
Is this report consolidated or unconsolidated?	Consolidated <input type="checkbox"/> 198 Unconsolidated <input type="checkbox"/> 199	
Does respondent carry its own security-based swap customer accounts?	Yes <input type="checkbox"/> 40 No <input type="checkbox"/> 41	

EXECUTION: The registrant submitting this Form and its attachments and the person(s) by whom it is executed represent hereby that all information contained therein is true, correct and complete. It is understood that all required items, statements, and schedules are considered integral parts of this Form and that the submission of any amendment represents that all unamended items, statements, and schedules remain true, correct and complete as previously submitted.

Dated the _____ day of _____, 20____.

Signatures of:

Names of:

- | | |
|--|---|
| 1) _____
Principal Executive Officer or Comparable Officer | _____ 12765
Principal Executive Officer or Comparable Officer |
| 2) _____
Principal Financial Officer or Comparable Officer | _____ 12766
Principal Financial Officer or Comparable Officer |
| 3) _____
Principal Operations Officer or Comparable Officer | _____ 12767
Principal Operations Officer or Comparable Officer |

ATTENTION: Intentional misstatements and/or omissions of facts constitute federal criminal violations. (See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).)

Persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

Name of Firm: _____
As of: _____

Items on this page to be reported by a: Bank SBSB
Bank MSBSP

<u>Assets</u>	<u>Totals</u>
1. Cash and balances due from depository institutions (from FFIEC Form 031's Schedule RC-A)	
A. Noninterest-bearing balances and currency and coin.....	\$ 0081b
B. Interest-bearing balances.....	\$ 0071b
2. Securities	
A. Held-to-maturity securities.....	\$ 1754b
B. Available-for-sale securities.....	\$ 1773b
3. Federal funds sold and securities purchased under agreements to resell	
A. Federal funds sold in domestic offices.....	\$ 3987b
B. Securities purchased under agreements to resell.....	\$ 3989b
4. Loans and lease financing receivables (from FFIEC Form 031's Schedule RC-C)	
A. Loans and leases held for sale.....	\$ 5369b
B. Loans and leases, net of unearned income.....	\$ 5528b
C. LESS: Allowance for loan and lease losses.....	\$ 3123b
D. Loans and leases, net of unearned income and allowance (Line 4B minus Line 4C).....	\$ 3529b
5. Trading assets (from FFIEC Form 031's Schedule RC-D).....	\$ 3545b
6. Premises and fixed assets (including capitalized leases).....	\$ 2145b
7. Other real estate owned (from FFIEC Form 031's Schedule RC-M).....	\$ 2150b
8. Investments in unconsolidated subsidiaries and associated companies.....	\$ 2130b
9. Direct and indirect investments in real estate ventures.....	\$ 3656b
10. Intangible assets	
A. Goodwill.....	\$ 3163b
B. Other intangible assets (from FFIEC Form 031's Schedule RC-M).....	\$ 0426b
11. Other assets (from FFIEC Form 031's Schedule RC-F).....	\$ 2160b
12. Total assets (sum of Lines 1 through 11).....	\$ 2170b

Name of Firm: _____

As of: _____

Items on this page to be reported by a: Bank SBSB
Bank MSBSP

<u>Liabilities</u>	<u>Totals</u>
13. Deposits	
A. In domestic offices (sum of totals of Columns A and C from FFIEC Form 031's Schedule RC-E, part I)	\$ 2200b
1. Noninterest-bearing.....	\$ 6631b
2. Interest-bearing	\$ 6636b
B. In foreign offices, Edge and Agreement subsidiaries, and IBFs (from FFIEC Form 031's Schedule RC-E, part II).....	\$ 2200b
1. Noninterest-bearing.....	\$ 6631b
2. Interest-bearing	\$ 6636b
14. Federal funds purchased and securities sold under agreements to repurchase	
A. Federal funds purchased in domestic offices	\$ 8993b
B. Securities sold under agreements to repurchase	\$ 8995b
15. Trading liabilities	\$ 3548b
16. Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases) (from FFIEC Form 031's Schedule RC-M).....	\$ 3190b
17. Not applicable.	
18. Not applicable.	
19. Subordinated notes and debentures	\$ 3200b
20. Other liabilities (from FFIEC Form 031's Schedule RC-G)	\$ 2930b
21. Total liabilities (sum of Lines 13 through 20).....	\$ 2948b
22. Not applicable.	
<u>Equity Capital</u>	
23. Perpetual preferred stock and related surplus	\$ 3838b
24. Common stock	\$ 3230b
25. Surplus (exclude all surplus related to preferred stock).....	\$ 3839b
26 A. Retained earnings.....	\$ 3632b
B. Accumulated other comprehensive income.....	\$ 8530b
C. Other equity capital components	\$ 1130b
27A. Total bank equity capital (sum of Lines 23 through 26.C).....	\$ 3210b
B. Non-controlling (minority) interests in consolidated subsidiaries.....	\$ 3000b
28. Total equity capital (sum of Lines 27A and 27B).....	\$ 3105b
29. Total liabilities and equity capital (sum of Lines 21 and 28).....	\$ 3300b

Name of Firm: _____

As of: _____

REGULATORY CAPITAL (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RC-R)

Items on this page to be reported by a: Bank SBSB
Bank MSBSP

<u>Capital</u>	<u>Totals</u>
1. Total bank equity capital (from FFIEC Form 031's Schedule RC, Line 27A)	\$ _____ 3210b
2. Tier 1 capital	\$ _____ 8274b
3. Tier 2 capital	\$ _____ 5311b
4. Tier 3 capital allocated for market risk	\$ _____ 1395b
5. Total risk-based capital	\$ _____ 3792b
6. Total risk-weighted assets	\$ _____ A223b
7. Total assets for the leverage ratio	\$ _____ A224b

Capital Ratios (Column B is to be completed by all banks. Column A is to be completed by banks with financial subsidiaries.)

	<u>Column A</u>	<u>Column B</u>
8. Tier 1 leverage ratio	\$ _____ 7204b	
9. Tier 1 risk-based capital ratio	_____ 7206b	\$ _____ 7206b
10. Total risk-based capital ratio	_____ 7205b	\$ _____ 7205b

Name of Firm: _____

As of: _____

INCOME STATEMENT (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RI)

Items on this page to be reported by a: Bank SBSB
Bank MSBSP

	<u>Totals</u>
1. Total interest income.....	\$ 4107b
2. Total interest expense.....	\$ 4073b
3. Total noninterest income.....	\$ 4079b
4. Total noninterest expense.....	\$ 4093b
5. Realized gains (losses) on held-to-maturity securities.....	\$ 3521b
6. Realized gains (losses) on available-for-sale securities.....	\$ 3196b
7. Income (loss) before income taxes and extraordinary items and other adjustments.....	\$ 4301b
8. Net income (loss) attributable to bank.....	\$ 4340b
9. Trading revenue (from cash instruments and derivative instruments)	
A. Interest rate exposures.....	\$ 8757b
B. Foreign exchange exposures.....	\$ 8758b
C. Equity security and index exposures.....	\$ 8759b
D. Commodity and other exposures.....	\$ 8760b
E. Credit exposures.....	\$ F186b
Lines 9F and 9G are to be completed by banks with \$100 billion or more in total assets that are required to complete lines 9A through 9E above.	
F. Impact on trading revenue of changes in the creditworthiness of the bank's derivative counterparties on the bank's derivative assets).....	\$ K090b
G. Impact on trading revenue of changes in the creditworthiness of the bank on the bank's derivative liabilities.....	\$ K094b
10. Net gains (losses) recognized in earnings on credit derivatives that economically hedge credit exposures held outside the trading account	
A. Net gains (losses) on credit derivatives held for trading.....	\$ C889b
B. Net gains (losses) on credit derivatives held for purposes other than trading.....	\$ C890b
11. Credit losses on derivatives.....	\$ A251b

Name of Firm: _____

As of: _____

Items on this page to be reported by a: Bank SBSB (if not exempt from Rule 18a-4)

CREDIT BALANCES

1. Free credit balances and other credit balances in the accounts carried for security-based swap customers (see Note A).....	\$	12768	
2. Monies borrowed collateralized by securities in accounts carried for security-based swap customers (see Note B).....	\$	12769	
3. Monies payable against security-based swap customers' securities loaned (see Note C).....	\$	12770	
4. Security-based swap customers' securities failed to receive (see Note D).....	\$	12771	
5. Credit balances in firm accounts attributable to principal sales to security-based swap customers.....	\$	12772	
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days.....	\$	12773	
7. Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days.....	\$	12774	
8. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days.....	\$	12775	
9. Other (List: _____)	\$	12776	
10. TOTAL CREDITS.....	\$		12785

DEBIT BALANCES

11. Debit balances in accounts carried for security-based swap customers, excluding unsecured accounts and accounts doubtful of collection (see Note E).....	\$	12777	
12. Securities borrowed to effectuate short sales by security-based swap customers and securities borrowed to make delivery on security-based swap customers' securities failed to deliver.....	\$	12778	
13. Failed to deliver of security-based swap customers' securities not older than 30 calendar days.....	\$	12779	
14. Margin required and on deposit with Options Clearing Corporation for all option contracts written or purchased in accounts carried for security-based swap customers (see Note F).....	\$	12780	
15. Margin related to security future products written, purchased or sold in accounts carried for security-based swap customers required and on deposit in a qualified clearing agency account at a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) or a derivative clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) (see Note G).....	\$	12781	
16. Margin related to cleared security-based swap transactions in accounts carried for security-based swap customers required and on deposit in a qualified clearing agency account at a clearing agency registered with the Commission pursuant to section 17A of the Exchange Act (15 U.S.C. 78q-1).....	\$	12782	
17. Margin related to non-cleared security-based swap transactions in accounts carried for security-based swap customers required and held in a qualified registered security-based swap dealer account at another security-based swap dealer.....	\$	12783	
18. Other (List: _____)	\$	12784	
19. TOTAL DEBITS.....	\$		12786

RESERVE COMPUTATION

20. Excess of total debits over total credits (Line 19 less Line 10).....	\$		12787
21. Excess of total credits over total debits (Line 10 less Line 19).....	\$		12788
22. Amount held on deposit in "Reserve Account(s)," including value of qualified securities, at end of reporting period.....	\$		12789
23. Amount of deposit (or withdrawal) including \$ 12790 value of qualified securities.....	\$		12791
24. New amount in Reserve Account(s) after adding deposit or subtracting withdrawal including \$ 12792 value of qualified securities.....	\$		12793
25. Date of deposit (MM/DDYY).....	\$		12794

References to notes in this section refer to the notes to 17 CFR 240.18a-4a.

Name of Firm: _____

As of: _____

Items on this page to be reported by a: Bank SBSB (if not exempt from Rule 18a-4)

State the market valuation and number of items of:

1. Security-based swap customers' excess securities collateral not in the respondent's possession or control as of the report date (for which instructions to reduce to possession or control had been issued as of the report date) but for which the required action was not taken by respondent within the time frame specified under Rule 18a-4. Notes A and B..... \$ 12795
 A. Number of items..... 12796
2. Security-based swap customers' excess securities collateral for which instructions to reduce possession or control had not been issued as of the report date under Rule 18a-4. \$ 12797
 A. Number of items..... 12798
3. The system and procedures utilized in complying with the requirement to maintain physical possession or control of security-based swap customers' excess securities collateral have been tested and are functioning in a manner adequate to fulfill the requirements of Rule 18a-4 Yes 12799 No 12800

Notes:

- A – Do not include in Line 1 security-based swap customers' excess securities collateral required by Rule 18a-4 to be in possession or control but for which no action was required by the respondent as of the report date or required action was taken by respondent within the time frames specified under Rule 18a-4.
- B – State separately in response to Line 1 whether the securities reported in response thereto were subsequently reduced to possession or control by the respondent.

Name of Firm: _____

As of: _____

Items on this page to be reported by a: Bank SBSD

EXEMPTION FROM RULE 18a-4

If an exemption from Rule 18a-4 is claimed, check the box..... 12104

Name of Firm: _____

As of: _____

FOCUS
Report
Part IIC
Schedule 1

SCHEDULE 1 – AGGREGATE SECURITY-BASED SWAP AND SWAP POSITIONS

Items to be reported by: Bank SBSBs
Bank MSBSBs

<u>Aggregate Positions</u>	<u>LONG/BOUGHT</u>	<u>SHORT/SOLD</u>
1. Security-based swaps		
A. Cleared	\$ _____ [12801]	\$ _____ [12809]
B. Non-cleared	\$ _____ [12802]	\$ _____ [12810]
2. Mixed swaps		
A. Cleared	\$ _____ [12803]	\$ _____ [12811]
B. Non-cleared	\$ _____ [12804]	\$ _____ [12812]
3. Swaps		
A. Cleared	\$ _____ [12805]	\$ _____ [12813]
B. Non-cleared	\$ _____ [12806]	\$ _____ [12814]
4. Other derivatives	\$ _____ [12807]	\$ _____ [12815]
5. Total (sum of Lines 1-4)	\$ _____ [12808]	\$ _____ [12816]

Name of Firm: _____
As of: _____

OMB APPROVAL
OMB Number:
Expires:
Estimated average burden hours per response:

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FOCUS REPORT PART IIC INSTRUCTIONS

GENERAL INSTRUCTIONS

Who Must File
Filing Requirements
Currency
Rounding
Definitions

SPECIFIC INSTRUCTIONS

Cover Page
Balance Sheet (Information as Reported on FFIEC Form 031 – Schedule RC)
Regulatory Capital (Information as Reported on FFIEC Form 031 – Schedule RC-R)
Income Statement (Information as Reported on FFIEC Form 031 – Schedule RI)
Computation for Determination of Security-Based Swap Customer Reserve Requirements
Possession or Control for Security-Based Swap Customers
Schedule 1 – Aggregate Security-Based Swap and Swap Positions

GENERAL INSTRUCTIONS

FOCUS Report Part IIC ("Part IIC") is a report of the U.S. Securities and Exchange Commission ("Commission") that is required to be filed by the following:

- Firms that are regulated by a prudential regulator, and also registered with the Commission as a security-based swap dealer ("bank SBSD")
- Firms that are regulated by a prudential regulator, and also registered with the Commission as a major security-based swap participant ("bank MSBSP").

The instructions issued from time to time must be used in preparing Part IIC and are considered an integral part of this report. **Filing Requirements**

Part IIC must be filed within 30 calendar days after the end of the calendar quarter in accordance with 17 CFR 240.18a-7.

Part IIC must be filed with the Commission or its designee. The name of the SBSD or MSBSP and the report's effective date must be repeated on each sheet of the report submitted. If no response is made to a line item or subdivision of a line item, it constitutes a representation that the SBSD or MSBSP has nothing to report.

Currency

Foreign currency may be expressed in terms of U.S. dollars at the rate of exchange as of the report's effective date and, where carried in conjunction with the U.S. dollar, balances for the same account holder may be consolidated with U.S. dollar balances and the gross or net position reported in its proper classification, provided the foreign currency is not subject to any restriction as to conversion.

Persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

Rounding

As a general rule, money amounts should be expressed in whole dollars. No valuation should be used which is higher than the actual valuation; for example, for \$170,000.85, use \$170,000 but not \$170,001. However, for *any or all short valuations*, round *up* the valuation to the nearest dollar; for example, for \$180,000.17, use \$180,001 but not \$180,000.

Definitions

"Prudential regulator" is defined in section 3 of the Securities Exchange Act of 1934 ("Exchange Act").

"Mixed swap" is defined in section 3(a)(68)(D) of the Exchange Act.

"Security-based swap" is defined in section 3(a)(68) of the Exchange Act.

"Security-based swap customer" is defined in 17 CFR 240.18a-4.

"Swap" is defined in section 3(a)(69) of the Exchange Act.

SPECIFIC INSTRUCTIONS

Cover Page

The cover page must be completed in its entirety. If a line does not apply, the firm should write "None" or "N/A" on the line, as applicable.

- 13 Name of reporting entity. Provide the name of the firm filing Part IIC, as it is registered with the Commission. Do not use DBAs or divisional names. Do not abbreviate.
- 20-23, 12763 Address of principal place of business. Provide the physical address (not a post office box) of the firm's principal place of business.
- 30 Name of person to contact in regard to this report. The identified person need not be an officer or partner of the firm, but should be a person who can answer any questions concerning this report.
- 31 (Area code) Telephone no. Provide the direct telephone number of the contact person whose name appears on Line Item 30.
- 32, 34, 36, 38 Name(s) of subsidiaries or affiliates consolidated in this report. Provide the name of the subsidiaries or affiliate firms whose financial and operational data are combined in Part IIC with that of the firm filing Part IIC.
- 33, 35, 37, 39 Official use. This item is for use by regulatory staff only (leave blank).

Balance Sheet (Information as Reported on FFIEC Form 031 – Schedule RC)

This section must be prepared by bank SBSDs and bank MSBSPs.

Notwithstanding the General Instructions above, this section should be prepared in accordance with the instructions accompanying FFIEC Form 031 ("FFIEC Instructions"), including "Schedule RC – Balance Sheet." Thus, dollar amounts should be reported in thousands.

Regulatory Capital (Information as Reported on FFIEC Form 031 – Schedule RC-R)

This section must be prepared by bank SBSDs and bank MSBSPs.

Notwithstanding the General Instructions above, this section should be prepared in accordance with the FFIEC Instructions, including "Schedule RC-R – Regulatory Capital." Thus, dollar amounts should be reported in thousands.

Note that the line numbers on this section and Schedule RC-R do not match, so firms should refer to the line item numbers (appended with the letter "b" in Part IIC) when matching Schedule RC-R's instructions with this section.

Income Statement (Information as Reported on FFIEC Form 031 – Schedule RI)

This section must be prepared by bank SBSBs and bank MSBSPs.

Notwithstanding the General Instructions above, this section should be prepared in accordance with the FFIEC Instructions, including "Schedule RI – Income Statement." Thus, dollar amounts should be reported in thousands.

Note that the line numbers on this section and Schedule RI do not match, so firms should refer to the line item numbers (appended with the letter "b" in Part IIC) when matching Schedule RI's instructions with this section.

Computation for Determination of Security-Based Swap Customer Reserve Requirements

This section must be prepared by bank SBSBs. Bank SBSBs that are exempt from 17 CFR 240.18a-4 are not required to complete this section. See also the notes accompanying 17 CFR 240.18a-4a.

Possession or Control for Security-Based Swap Customers

This section must be prepared by bank SBSBs. Bank SBSBs that are exempt from 17 CFR 240.18a-4 are not required to complete this section. This calculation under 17 CFR 240.18a-4a should be limited to security-based swap accounts.

Schedule 1 – Aggregate Security-Based Swap and Swap Positions

This schedule must be prepared by bank SBSBs and bank MSBSPs.

For the applicable security-based swap, mixed swap, or swap, report the quarter-end gross replacement value for cleared and non-cleared receivables in the long/bought column, and report the quarter-end gross replacement value for cleared and non-cleared payables in the short/sold column. Report the total on the "Total" row.

By the Commission.

Dated: September 19, 2019

Vanessa A. Countryman,
Secretary.