SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–71958; File No. S7–05–14]

RIN 3235–AL45

Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed 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 proposing 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 proposing an additional capital charge provision that would be added to the proposed capital rule for certain SBSDs. Finally, the Commission is proposing technical amendments to the broker-dealer recordkeeping, reporting, and notification requirements.

DATES: Comments should be received on or before July 1, 2014.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–05–14 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–05–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Associate Director, at (202) 551–5521; Randall W. Roy, Assistant Director, at (202) 551–5522; Denise Landers, Senior Special Counsel, at (202) 551–5544; Raymond A. Lombardo, Branch Chief, at (202) 551–5755; Timothy C. Fox, Special Counsel at (202) 551–5687; or Valentina Minak Deng, Special Counsel, at (202) 551–5778, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

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I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act into law.[1] Title VII of the Dodd-Frank Act (''Title VII'') established a new regulatory framework for the over-the-counter (''OTC'') derivatives markets.[2] In this

[1] *See Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,* Public Law 111–203, 124 Stat. 1376 (2010).

[2] Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.'' *See* Public Law 111–203, 701. The Dodd-Frank Act assigns responsibility for the oversight of the U.S. OTC derivatives markets to the Commission, the Commodity Futures Trading Commission (''CFTC''), and certain prudential regulators. The term *prudential regulator* is defined in section 1(a)(39) of the Commodity Exchange Act (''CEA'') (7 U.S.C. 1(a)(39)) and that definition is incorporated by reference in section 3(a)(74) of the Exchange Act (15 U.S.C. 78c(a)(74)). Pursuant to the definition, the Board of Governors of the Federal Reserve System (''Federal Reserve''), the Office of the Comptroller

regard, Title VII was enacted, among other reasons, to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and regulation of SBSDs and MSBSPs; (2) imposing clearing and trade execution requirements on swaps and security-based swaps, subject to certain exceptions; (3) creating recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.[3]

Section 764 of the Dodd-Frank Act added section 15F to the Exchange Act.[4] Section 15F(f)(2) provides that the Commission shall adopt rules governing reporting and recordkeeping for SBSDs and MSBSPs.[5] 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.[6] Section 15F(f)(1)(B)(ii) provides that SBSDs and MSBSPs without a prudential regulator (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.[7] 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.[8] Section 15F(g) of the Exchange Act requires SBSDs and MSBSPs to 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.[9] Finally, section 15F(i)(2) of the Exchange Act provides that the Commission shall adopt rules governing documentation standards for SBSDs and MSBSPs.[10]

The Commission anticipates that a number of broker-dealers will register as SBSDs (broker-dealer SBSDs) or potentially as MSBSPs (''broker-dealer MSBSPs).[11] Further, the Commission expects that some broker-dealers that are not registered as an SBSD or an MSBSP nonetheless will engage in security-based swap and swap activities.[12] The Commission has authority under section 17(a)(1) of the Exchange Act to adopt rules requiring broker-dealers—which would include broker-dealer SBSDs and broker-dealer 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.[13] The Commission also is proposing largely technical amendments to the broker-dealer recordkeeping, reporting, and notification rules.[14]

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 participant, or major swap participant if the entity is directly supervised by that agency. 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) of the Exchange Act (15 U.S.C. 78c(a)(71)) and a *major security-based swap participant* as defined in section 3(a)(67) of the Exchange Act (15 U.S.C. 78c(a)(67)). The CFTC has oversight authority with respect to a *swap* as defined in section 1(a)(47) of the 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, among other things, the terms *swap, swap dealer, major swap participant, security-based swap, security-based swap dealer, and major security-based swap participant. 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) (joint Commission/CFTC final rule); *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) (joint Commission/CFTC final rule).

[3] *See* Public Law 111–203, 701 through 774.

[4] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10.

[5] *See* 15 U.S.C. 78o–10(f)(2).

[6] *See* 15 U.S.C. 78o–10(f)(1).

[7] *See* 15 U.S.C. 78o–10(f)(1)(B)(ii). A nonbank SBSD or nonbank 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.

[8] *See* 15 U.S.C. 78o–10(f)(1)(B)(i).

[9] *See* 15 U.S.C. 78o–10(g).

[10] *See* 15 U.S.C. 78o–10(i).

[11] 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. For example, a broker-dealer or bank may be required to register as an MSBSP because of the nature of its security-based swap activities. *See* 15 U.S.C. 78a(c)(67) (defining the term *major security-based swap participant*); *Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30596 (further defining the term *major security-based swap participant*). In this case, the broker-dealer or bank may conclude that it is more efficient to register as an SBSD in order to engage in security-based swap activities permitted of an SBSD but not of an MSBSP. Nonetheless, because a broker-dealer or bank could register as an MSBSP, the proposed rules and the discussion in this release contemplate these categories of registrants. A broker-dealer MSBSP would be subject to all the securities laws applicable to a broker-dealer, including capital, margin, segregation, recordkeeping, reporting, notification, and securities count requirements, and to any additional requirements that would be applicable only to MSBSPs. Similarly, a bank MSBSP would be subject to all laws and regulations applicable to a bank and to any additional requirements that would be applicable only to MSBSPs.

[12] The term *security-based swap dealer* is defined in section 3(a)(71) of the Exchange Act. *See* 15 U.S.C. 78c(a)(71). The definition excludes an entity that enters into security-based swaps agreements for its own account, either individually or in a fiduciary capacity, but not as a part of a regular business. *See* 15 U.S.C. 78c(a)(71)(C). Further, section 3(a)(71)(D) provides that the Commission shall exempt from designation as an SBSD an entity that engages in a *de minimis* quantity of security-based swap dealing in connection with transactions with or on behalf of its customers and that the Commission shall promulgate regulations to establish factors with respect to the making of any determination to exempt. *See* 15 U.S.C. 78c(a)(71)(D). The Commission has adopted Rule 3a71–2 to establish a *de minimis* exception under section 3(a)(71)(D) of the Exchange Act. *See* 17 CFR 240.3a71–2; *Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30635–30643.

[13] *See* 15 U.S.C. 78q(a)(1). 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. *See* Public Law 111–203, 771.

[14] *See* 17 CFR 240.17a–3 (''Rule 17a–3''); 17 CFR 240.17a–4 (''Rule 17a–4''); 17 CFR 240.17a–5 (''Rule 17a–5''); 17 CFR 240.17a–11 (''Rule 17a–11''). The Dodd-Frank Act amended the definition of *security* in section 3(a)(10) of the Exchange Act to include a security-based swap. *See* Public Law 111–203, 761(a)(2); 15 U.S.C. 78c(a)(10). Therefore, the term *security* as used in Rules 17a–3, 17a–4, 17a–5, and 17a–11 includes a security-based swap, and any requirement in those rules relating to a security applies to a security-based swap. The Commission, however, has issued temporary exemptive relief to address the effect that the amendment to the definition of *security* would have on requirements in Exchange Act provisions and rules that did not otherwise apply specifically to security-based swaps prior to the amendment. *See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (''[R]egistered broker-dealers will solely be exempt from those provisions and rules to the extent that those provisions or rules do not apply to the broker's or

Continued

Pursuant to sections 15F and 17(a) of the Exchange Act, the Commission is proposing to amend Rules 17a–3, 17a–4, 17a–5, and 17a–11 to establish a recordkeeping, reporting, and notification program for broker-dealer SBSDs and broker-dealer MSBSPs. The amendments to Rules 17a–3 and 17a–4 would establish additional recordkeeping requirements applicable to broker-dealers that are not dually registered as an SBSD or MSBSP to the extent they engage in security-based swap or swap activities.

Pursuant to section 15F of the Exchange Act, the Commission is proposing new Rules 18a–5 through 18a–9.[15] These new rules would establish a recordkeeping, reporting, and notification program for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, and securities count requirements for stand-alone SBSDs.[16] In addition, pursuant to sections 15F and 17(a) of the Exchange Act, the Commission is proposing new FOCUS Report Form SBS (''Form SBS'') that would be used by all types of SBSDs and MSBSPs to report financial and operational information and, in the case of broker-dealer SBSDs and broker-dealer MSBSPs, replace their use of Part II, Part IIA, Part IIB, or Part II CSE of the Financial and Operational Combined Uniform Single Report (''FOCUS Report'').[17]

The proposed new rules are modeled on broker-dealer Rules 17a–3, 17a–4, 17a–5, 17a–11, and 17a–13, and on the FOCUS Report. Specifically: (1) Proposed Rules 18a–5 and 18a–6 (the new recordkeeping rules) are modeled on Rules 17a–3 and 17a–4, respectively (the broker-dealer recordkeeping rules); [18] (2) proposed Rule 18a–7 and proposed Form SBS (the new reporting rules) are modeled on Rule 17a–5 and on the FOCUS Report, respectively (the broker-dealer reporting rules); [19] (3) proposed Rule 18a–8 (the new notification rule) is modeled on Rule 17a–11 (the broker-dealer notification rule); [20] and (4) proposed Rule 18a–9 (the new securities count rule) is modeled on the Rule 17a–13 (the broker-dealer securities count rule).[21]

The broker-dealer recordkeeping, reporting, notification, and security count requirements served as the model for the proposals because SBSDs and MSBSPs are expected to operate in financial markets and effect financial transactions that are similar to the financial markets in which broker-dealers operate and the financial transactions that broker-dealers effect.[22] In addition, as discussed below, the objectives of these broker-dealer requirements are similar to the objectives underlying the proposals regarding security-based swaps. Moreover, the broker-dealer requirements have existed for many years and have established a system of recordkeeping for securities transactions that reflect and support prudent business practices and accountability of broker-dealers and have facilitated the ability of securities regulators to review and monitor compliance with securities laws.[23] Consequently, the Commission preliminarily believes the broker-dealer requirements provide an appropriate template on which to model a recordkeeping, reporting, and notification program for SBSDs and MSBSPs and a securities count program for SBSDs. Furthermore, as discussed above, it is expected that some nonbank SBSDs will dually register as broker-dealers in order to be able to offer customers a broader range of securities-based services than would be permitted of a nonbank SBSD.[24] Therefore, establishing consistent requirements could avoid potential competitive disparities between stand-alone SBSDs and broker-dealer SBSDs with respect to their security-based swap business.

Additionally, in accordance with Title VII, the Commission recently proposed, among other things, capital and margin

dealer's security-based swap positions or activities as of July 15, 2011—the day before the effectiveness of the change to the ''security'' definition. In other words, during the exemptive period the application of current law will remain unchanged, and those particular Exchange Act requirements will continue to apply to registered broker-dealers' security-based swap activities and positions to the same extent they apply currently. This approach is intended to help avoid undue market disruptions resulting from the change to the ''security'' definition, while at the same time preserving the current application of those particular provisions or rules to security-based swap activity by registered broker-dealers. Thus, under this approach of preserving the *status quo,* no exemption will be provided in connection with the [requirements in Exchange Act sections 17(a) and 17(b) and Rules 17a–3, 17a–4, 17a–5, 17a–8, and 17a–13] under the Exchange Act to the extent that those requirements currently apply to registered broker-dealer activities or positions involving instruments that will be security-based swaps (but registered broker-dealers will be exempted in connection with those requirements to the extent that the requirements do not already apply to activities or positions involving those instruments.''); *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 (Feb. 13, 2013) (extending exemptive relief through February 11, 2014); *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 Release No. 71485 (Feb. 5, 2014) (extending exemptive relief with respect to Rules 17a–3, 17a–4, 17a–5, 17a–11, and 17a–13 until the earliest compliance date set forth in any final rules regarding recordkeeping and reporting requirements for SBSDs and MSBSPs). The Commission expects that the adoption of the amendments contemplated herein would eliminate the need for temporary exemptive relief from section 17(a) and section 17(b) of the Exchange Act and Rules 17a–3, 17a–4, 17a–5, 17a–11, and 17a–13 thereunder.

[15] The Commission has proposed new Rules 18a–1 through 18a–4 to establish capital and margin requirements for SBSDs and MSBSPs, segregation requirements for SBSDs, and notification requirements with respect to segregation for SBSDs and MSBSPs. *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 70213 (Nov. 23, 2012).

[16] The Commission is not proposing securities count requirements for stand-alone MSBSPs or bank SBSDs. Broker-dealer SBSDs and broker-dealer MSBSPs would be subject to the existing securities count rule applicable to broker-dealers—Rule 17a–13. 17 CFR 240.17a–13. The Commission is not proposing amendments to Rule 17a–13. While in this release Rule 17a–11 is referred to as a *notification* rule and Rule 17a–13 is referred to as a *securities count* rule, Rule 17a–11 can be viewed as a reporting rule and Rule 17a–13 can be viewed as a recordkeeping rule. *See Prompt Notice of Net Capital or Recordkeeping Violations,* Exchange Act Release No. 9268 (July 29, 1971), 36 FR 14725 (Aug. 11, 1971) (adopting Rule 17a–11, in part, under section 17(a) of Exchange Act, which, as discussed above, requires a broker-dealer 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 Exchange Act); *Quarterly Securities Counts by Certain Exchange Members, Brokers and Dealers,* Exchange Act Release No. 9376 (Oct. 29, 1971), 36 FR 21178 (Nov. 4, 1971) (similarly adopting Rule 17a–13, in part, under section 17(a) of Exchange Act).

[17] A broker-dealer must file the FOCUS Report Part II, Part IIA, Part IIB, or Part II CSE depending on the type of broker-dealer. A more detailed discussion of the FOCUS Report appears below in section II.B.2. of this release.

[18] *Compare* proposed Rule 18a–5, *with* 17 CFR 240.17a–3; *compare* proposed Rule 18a–6, *with* 17 CFR 240.17a–4.

[19] *Compare* proposed Rule 18a–7, *with* 17 CFR 240.17a–5; *compare* proposed Form SBS, *with* the FOCUS Report.

[20] *Compare* proposed Rule 18a–8, *with* 17 CFR 240.17a–11.

[21] *Compare* proposed Rule 18a–9, *with* 17 CFR 240.17a–13.

[22] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70216 (stating a similar rationale for basing the proposed capital, margin, and segregation requirements for SBSDs on the broker-dealer capital, margin, and segregation requirements).

[23] *See, e.g., 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),* Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001).

[24] Although a broker-dealer SBSD would be able to offer customers a broader range of securities-based services than a bank SBSD, bank SBSDs are not expected to register as broker-dealers because of the regulatory burden associated with complying with the requirements applicable to all three types of entities.

requirements applicable to nonbank SBSDs and nonbank MSBSPs, and segregation requirements applicable to SBSDs.[25] The capital, margin, and segregation proposals that would be applicable to SBSDs were modeled on the capital, margin, and segregation requirements that are applicable to broker-dealers.[26] The broker-dealer capital, margin, segregation, recordkeeping, reporting, notification, and securities count requirements are known collectively as the broker-dealer *financial responsibility rules.*[27] The financial responsibility rules collectively 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. 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. Similarly, the proposed recordkeeping, reporting, notification, and securities count requirements applicable to SBSDs and MSBSPs along with the proposed 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 proposed recordkeeping, reporting, notification, and securities count requirements applicable to SBSDs and MSBSPs are designed to provide transparency into the business activities of SBSDs and MSBSPs and assist the Commission in reviewing and monitoring compliance with the proposed capital, margin, and segregation requirements applicable to SBSDs and MSBSPs.

While the proposed recordkeeping, reporting, notification, and securities count rules are modeled on the broker-dealer rules, stand-alone SBSDs and stand-alone MSBSPs will not engage in the same range of activities permitted of broker-dealers. For example, broker-dealers are permitted to act as dealers with respect to all types of securities, whereas stand-alone SBSDs would be permitted to act as dealers only with respect to security-based swaps and stand-alone MSBSPs would not be permitted to act as dealers with respect to any types of securities. Consequently, the proposed requirements in the new rules applicable to stand-alone SBSDs and stand-alone MSBSPs reflect these differences and are narrower in scope than those applicable to broker-dealer SBSDs and broker-dealer MSBSPs. Further, the proposed requirements applicable to bank SBSDs and bank MSBSPs are narrower in scope than those applicable to stand-alone SBSDs and stand-alone MSBSPs for three reasons. First, as noted above, the recordkeeping and reporting requirements for bank SBSDs and bank MSBSPs—unlike those for nonbank SBSDs and nonbank MSBSPs—must be related to their business as an SBSD or MSBSP.[28] Second, as banks, these registrants are subject to existing recordkeeping and reporting requirements administered by the prudential regulators and therefore to avoid potentially duplicative or conflicting requirements, the Commission has proposed fewer requirements for these entities. Third, the prudential regulators—rather than the Commission—will administer the capital, margin, and other prudential requirements applicable to bank SBSDs and bank MSBSPs and, as noted above, one of the purposes of the proposed recordkeeping requirements is to assist the Commission in reviewing and monitoring compliance with the proposed capital and margin rules applicable to nonbank SBSDs and nonbank MSBSPs, which the Commission will administer.[29]

The Commission recognizes that there may be alternative recordkeeping, reporting, notification, and securities count programs that could be used as a model to design a recordkeeping, reporting, notification, and securities count program for SBSDs and MSBSPs. Accordingly, in response to the requests for comment in this release, interested parties are encouraged to consider whether alternative approaches would be appropriate for SBSDs and MSBSPs generally as well as for each type of potential registrant—broker-dealer SBSD, broker-dealer MSBSP, stand-alone SBSD, stand-alone MSBSP, bank SBSD, and bank MSBSP—taking into account the unique characteristics and activities of each type of potential registrant.

Some of the current rules that are proposed to be amended and the proposed new rules prescribe recordkeeping or reporting requirements based on requirements in other rules that have been proposed but not yet adopted. For example, Rules 17a–3 and 17a–4, as proposed to be amended, and proposed Rules 18a–5 and 18a–6 would directly or indirectly cross-reference requirements in proposed Rule 901 of Regulation SBSR and proposed Rules 15Fh–1 through 15Fh–6 and proposed Rule 15Fk–1.[30] Similarly, Rules 17a–3, 17a–4, 17a–5, and 17a–11, as proposed to be amended, and proposed Rules 18a–5, 18a–6, 18a–7, and 18a–8 cross-reference requirements in the proposed capital, margin, and segregation requirements for SBSDs and MSBSPs.[31] If a cross-referenced rule is modified from the proposal when adopted, the Commission intends to make any necessary corresponding modifications to the rules proposed in this release when they are adopted.

Finally, the Commission also is proposing to add a capital charge provision to proposed Rule 18a–1.[32] Proposed Rule 18a–1 would establish net capital requirements for stand-alone SBSDs and is modeled on Rule 15c3–1

[25] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213.

[26] *Id. See also* 17 CFR 240.15c3–1 (the broker-dealer capital rule); FINRA Rules 4210 through 4240 (certain broker-dealer margin rules); 17 CFR 240.15c3–3 (the broker-dealer segregation rule).

[27] *See* 17 CFR 240.3a40–1.

[28] *Compare* 15 U.S.C. 78o–10(f)(1)(B)(i), *with* 15 U.S.C. 78o–10(f)(1)(B)(ii) *and* 15 U.S.C. 78q(a). As noted above, section 15F(f)(1)(B)(i) of the Exchange Act provides that each bank SBSD and bank MSBSP shall keep books and records of all activities *related to the 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 (emphasis added). *See* 15 U.S.C. 78o–10(f)(1)(B)(i). Whereas, section 15F(f)(1)(B)(ii) of the Exchange Act provides that each nonbank SBSD and nonbank MSBSP 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. *See* 15 U.S.C. 78o–10(f)(1)(B)(ii). Further, section 17(a) of the Exchange Act provides that broker-dealers shall 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. *See* 15 U.S.C. 78q(a).

[29] Section 15F(e)(1)(A) of the Exchange Act provides that the prudential regulators shall prescribe capital and margin requirements for bank SBSDs and bank MSBSPs, and section 4s(e)(1)(A) of the CEA provides that the prudential regulators shall prescribe capital and margin requirements for swap dealers and major swap participants for which there is a prudential regulator (''bank swap dealers'' and ''bank swap participants''). *See* 15 U.S.C. 78o–10(e)(1)(A); 7 U.S.C. 6s(e)(1)(A). The prudential regulators have proposed capital and margin requirements for bank swap dealers, bank SBSDs, bank swap participants, and bank MSBSPs. *See Margin and Capital Requirements for Covered Swap Entities,* 76 FR 27564 (May 11, 2011).

[30] *See* section II.A. of this release.

[31] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213.

[32] This proposal is discussed below in greater detail in section II.D.3. of this release.

under the Exchange Act (the broker-dealer net capital rule) (''Rule 15c3–1'').[33] The capital charge provision that would be added to proposed Rule 18a–1, which is modeled on a provision in Rule 15c3–1, was inadvertently omitted from proposed Rule 18a–1 when originally proposed. The Commission preliminarily believes that proposed Rule 18a–1 should include a provision that parallels the capital charge in Rule 15c3–1.

The Commission staff consulted with staff from the prudential regulators and the CFTC in drafting the proposals discussed in this release.[34] In addition, the proposals of the CFTC were considered in developing the Commission's proposed recordkeeping, reporting, notification and securities count rules for SBSDs and MSBSPs.

Request for Comment

The Commission requests comment on the general approach that would require SBSDs and MSBSPs to comply with recordkeeping, reporting, notification, and securities count rules modeled on the broker-dealer recordkeeping, reporting, notification, and securities count rules. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Will the entities that register as nonbank SBSDs engage in a securities business with respect to security-based swaps that is similar to the securities business conducted by broker-dealers? If not, describe how the securities activities of nonbank SBSDs will differ from the securities activities of broker-dealers.

2. Will the entities that register as bank SBSDs engage in a securities business with respect to security-based swaps that is similar to the securities business conducted by broker-dealers? If not, describe how the securities activities of bank SBSDs will differ from the securities activities of broker-dealers.

3. How many broker-dealers will register as SBSDs? Describe the types of broker-dealers that will register as SBSDs and the types of activities these broker-dealers currently engage in? How many banks will register as SBSDs? Describe the types of banks that will register as SBSDs and the types of activities these banks currently engage in?

4. How many entities will register as MSBSPs? What types of entities? How many broker-dealers will register as MSBSPs? How many banks will register as MSBSPs?

5. Are there requirements in these proposed rules applicable to broker-dealer SBSDs and broker-dealer MSBSPs but currently not applicable to stand-alone SBSDs or stand-alone MSBSPs that should be applicable to standalone SBSDs or stand-alone MSBSPs, or vice versa?

6. Are there requirements in these proposed rules applicable to broker-dealer SBSDs and broker-dealer MSBSPs but currently not applicable to bank SBSDs or bank MSBSPs that should be applicable to bank SBSDs or bank MSBSPs, or vice versa?

7. Are there provisions in the rules that the CFTC adopted governing recordkeeping and reporting obligations of swap dealers and major swap participants that the Commission should consider incorporating into the recordkeeping and reporting requirements for SBSDs and MSBSPs? If so, please identify the specific provision and explain why the Commission should incorporate it.

8. In the release adopting a further definition of *major security-based swap participant,* the Commission stated that an entity's security-based swap positions in general would be attributed to a parent, other affiliate, or guarantor for purposes of the MSBSP analysis to the extent that the counterparties to those positions would have recourse to that other entity in connection with the position.[35] The Commission further stated that an entity that becomes an MSBSP by virtue of security-based swaps directly entered into by others must be responsible for compliance with all applicable requirements with respect to those security-based swaps (and must be liable for failures to comply), but may delegate operational compliance with transaction-focused requirements to entities that directly are party to the transactions.[36] The Commission stated its preliminary belief that the same approach should apply in the cross-border context when the guarantor and the guaranteed persons are located in different jurisdictions.[37] The Commission preliminarily believes that certain of the recordkeeping requirements that would be applicable to MSBSPs under the proposed amendments are transaction-focused and, therefore, that an MSBSP may delegate operational compliance with them to the entities that are directly a party to the transaction.[38] For example, the Commission preliminarily believes that the proposed requirements discussed below in section II.A.2. of this release under which MSBSPs would need to make and keep current memoranda of proprietary orders, confirmations, accountholder information, and records relating to certain business conduct standards are transaction-focused. Similarly, the proposed requirements to retain communications relating to the MSBSP's ''business as such'' are transaction-focused. On the other hand, the Commission preliminarily believes that other recordkeeping requirements proposed for MSBSPs are entity-level requirements and, therefore an MSBSP would not be permitted to delegate operational compliance with respect to these requirements to other entities. For example, the Commission preliminarily believes that the proposed requirement that an MSBSP make and keep current a general ledger (or other records) reflecting all assets and liabilities, income and expense, and capital accounts is an entity-level requirement. Commenters are asked to identify which of the recordkeeping requirements applicable to MSBSPs in proposed new Rules 18a–5 and 18a–6 that they believe are transaction-focused and to explain their reasons for identifying them as such. Commenters also are asked to identify any operational compliance challenges with respect to the proposed recordkeeping requirements raised by attributing guaranteed security-based swap positions to an MSBSP.

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[33] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70217–70257.

[34] *See* Public Law 111–203, 712(a)(2). 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).

[35] *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30689.

[36] *Id.*

[37] *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, 31034 (May 23, 2013).

[38] The Commission preliminarily believes that the proposed reporting and notification requirements that would be applicable to MSBSPs are not transaction-focused and, therefore, the MSBSP could not delegate operation compliance with respect to these requirements to other entities.

II. Proposed Rules and Rule Amendments

A. Recordkeeping

1. Introduction

As discussed above in section I. of this release, section 15F(f)(2) of the Exchange Act provides that the Commission shall adopt rules governing recordkeeping for SBSDs and MSBSPs.[39] The Commission also has concurrent authority under section 17(a)(1) of the Exchange Act to prescribe recordkeeping requirements for broker-dealers.[40] Further, section 15F(f)(1)(B)(i) of the Exchange Act provides that each bank SBSD and bank MSBSP shall keep books and records of all activities related to its 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.[41] Section 15F(f)(1)(B)(ii) provides that each nonbank SBSD and nonbank MSBSP 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.[42]

Section 15F(g) of the Exchange Act prescribes statutory recordkeeping requirements applicable to SBSDs and MSBSPs and requires the Commission to adopt rules with respect to these statutory requirements.[43] In particular, section 15F(g)(1) provides that each registered SBSD and MSBSP shall maintain daily trading records of the security-based swaps of the registered SBSD and 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.[44] Section 15F(g)(2) provides that the daily trading records shall include such information as the Commission shall require by rule or regulation.[45] Section 15F(g)(3) provides that each registered SBSD and MSBSP shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each security-based swap transaction.[46] Section 15F(g)(4) provides that each registered SBSD and MSBSP shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.[47] Finally, section 15F(g)(5) provides that the Commission shall adopt rules governing daily trading records for SBSDs and MSBSPs.[48]

Section 15F(i)(1) of the Exchange Act provides that each registered SBSD and MSBSP shall conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.[49] Section 15F(i)(2) provides that the Commission shall adopt rules governing documentation standards for SBSDs and MSBSPs.[50]

After considering the anticipated business activities of SBSDs and MSBSPs, the Commission is proposing to establish a recordkeeping program for these registrants under sections 15F and 17(a) of the Exchange Act that is modeled on the recordkeeping program for broker-dealers codified in Rules 17a–3 and 17a–4.[51] Rules 17a–3 and 17a–4 specify requirements with respect to the records that a broker-dealer must make and keep current, as well as how long and, the manner in which, these records and other records relating to a broker-dealer's business must be maintained and preserved.[52]

In particular, Rule 17a–3 requires a broker-dealer to make and keep current certain books and records.[53] The required records include, among other records: Blotters containing an itemized daily record of all purchases and sales of securities; ledgers reflecting all assets and liabilities, income and expense, and capital accounts; a securities record or ledger reflecting separately for each security as of the clearance dates all ''long'' or ''short'' positions; a memorandum of each brokerage order; a memorandum of each purchase or sale of a security for the account of the broker-dealer; and copies of confirmations.[54]

Rule 17a–4 requires a broker-dealer to preserve additional records if the broker-dealer makes or receives the type of record.[55] The categories of records include, among other records, check books, bank statements, bills receivable or payable, communications relating to the broker-dealer's business as such, and written agreements.[56] The rule also establishes retention periods for all records required to be made and kept current under Rule 17a–3 and preserved under Rule 17a–4, and prescribes, among other things, how the records must be retained, including requirements for firms that preserve their records electronically.[57]

The recordkeeping program codified in Rules 17a–3 and 17a–4 is designed, among other things, to promote the prudent operation of broker-dealers and assist the Commission, self-regulatory organizations (''SROs''), and state securities regulators in conducting effective examinations of broker-dealers.[58] As the Commission has stated,

> In combination, Rules 17a–3 and 17a–4 require broker-dealers to create, and preserve in an accessible manner, a comprehensive record of each securities transaction they effect and of their securities business in general. These 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, including antifraud provisions and financial responsibility standards.[59]

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[39] *See* 15 U.S.C. 78o–10(f)(2).

[40] *See* 15 U.S.C. 78q(a)(1).

[41] *See* 15 U.S.C. 78o–10(f)(1)(B)(i).

[42] *See* 15 U.S.C. 78o–10(f)(1)(B)(ii).

[43] *See* 15 U.S.C. 78o–10(g).

[44] *See* 15 U.S.C. 78o–10(g)(1).

[45] *See* 15 U.S.C. 78o–10(g)(2).

[46] *See* 15 U.S.C. 78o–10(g)(3).

[47] *See* 15 U.S.C. 78o–10(g)(4).

[48] *See* 15 U.S.C. 78o–10(g)(5).

[49] *See* 15 U.S.C. 78o–10(i)(1).

[50] *See* 15 U.S.C. 78o–10(i)(2). Pursuant to section 15F(i) of the Exchange Act, the Commission has proposed Rule 15Fi–1 that would prescribe standards related to timely and accurate confirmation and documentation of security-based swaps. *See Trade Acknowledgment and Verification of Security-Based Swap Transactions,* Exchange Act Release No. 63727 (Jan. 14, 2011), 76 FR 3859 (Jan. 21, 2011).

[51] *See* 17 CFR 240.17a–3; 17 CFR 240.17a–4.

[52] *See* 17 CFR 240.17a–3; 17 CFR 240.17a–4.

[53] *See* 17 CFR 240.17a–3.

[54] *Id.* As noted above in section I. of this release, the Dodd-Frank Act amended the definition of *security* in section 3(a)(10) of the Exchange Act to include a security-based swap. *See* Public Law 111–203, 761(a)(2); 15 U.S.C. 78c(a)(10). Therefore, each reference in Rules 17a–3 and 17a–4 to a *security* 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 Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* 76 FR 39927.

[55] *See* 17 CFR 240.17a–4.

[56] *Id.*

[57] *Id.*

[58] *See, e.g., 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 22916; *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 (Nov. 2, 2001) (''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).

[59] *See Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the*

Continued

Under the proposed recordkeeping program for SBSDs and MSBSPs, broker-dealer SBSDs and broker-dealer MSBSPs—as broker-dealers—would be subject to Rules 17a–3 and 17a–4.[60] The Commission is proposing amendments to these rules to account for the security-based swap and swap activities of broker-dealers, including broker-dealers registered as SBSDs and MSBSPs, as well as to implement the specific recordkeeping requirements mandated under the Dodd-Frank Act.[61] Stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be subject to proposed Rules 18a–5 and 18a–6, which are modeled on Rules 17a–3 and 17a–4, respectively, as these rules are proposed to be amended.

Proposed Rules 18a–5 and 18a–6 would 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 not expected or permitted of SBSDs and MSBSPs. Further, the proposed recordkeeping requirements that would be applicable to bank SBSDs and bank MSBSPs are more limited in scope because, as discussed above in section I. of this release: (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 business as an SBSD or MSBSP; (2) bank SBSDs and bank MSBSPs are subject to recordkeeping requirements applicable to banks; and (3) the prudential regulators—rather than the Commission—are responsible for capital, margin, and other prudential requirements applicable to bank SBSDs and bank MSBSPs. For these reasons, the proposed recordkeeping requirements that would be applicable to bank SBSDs and bank MSBSPs are designed to be tailored more specifically to their security-based swap activities as an SBSD or an MSBSP.[62]

2. Records To Be Made and Kept Current

As discussed above, Rule 17a–3 requires a broker-dealer to make and keep current certain records.[63] The Commission is proposing to amend this rule to account for the security-based swap and swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs.[64] The Commission also is proposing additional largely technical amendments to Rule 17a–3.[65] With respect to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, the Commission is proposing new Rule 18a–5—which is modeled on Rule 17a–3, as proposed to be amended—to require these registrants to make and keep current certain records.[66] For the reasons discussed above, proposed Rule 18a–5 does not include a parallel requirement for every requirement in Rule 17a–3.[67] In addition, paragraph (a) of proposed Rule 18a–5 contains one set of recordkeeping requirements applicable to stand-alone SBSDs and stand-alone MSBSPs and paragraph (b) of proposed Rule 18a–5 contains a separate set of recordkeeping requirements applicable to bank SBSDs and bank MSBSPs that are more limited in scope.[68]

As discussed above, section 15F(g) of the Exchange Act provides, among other things, that each registered SBSD and MSBSP shall maintain: (1) Daily trading records of the security-based swaps of the registered SBSD and MSBSP; (2) daily trading records for each counterparty in a manner and form that is identifiable with each security-based swap transaction; and (3) a complete audit trail for conducting comprehensive and accurate trade reconstructions.[69] Further, section 15F(g)(2) provides that the daily trading records shall include such information as the Commission shall require by rule or regulation.[70] To implement section 15F(g) of the Exchange Act, Rule 17a–3, as proposed to be amended, and proposed Rule 18a–5 include provisions that, among other things, are designed to require information that would facilitate a comprehensive and accurate trade reconstruction for each security-based swap transaction.

In this regard, the amendments to Rule 17a–3 and proposed Rule 18a–5 would require broker-dealers, SBSDs, and MSBSPs to make and keep current daily trading records,[71] ledger accounts,[72] a securities record,[73] memoranda of brokerage orders,[74] and/or memoranda of proprietary trades[75] with respect to security-based swap activity. The Commission has proposed Rule 901 of Regulation SBSR, which would require market participants, including broker-dealers, SBSDs, and MSBSPs, to report certain data elements to security-based swap data repositories.[76]

The following data elements that would be required to be reported under proposed Rule 901 also would need to be documented in the daily trading records, ledger accounts, memoranda of brokerage orders, and/or memoranda of

Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a–4(f), 66 FR 22917.

[60] *See* 17 CFR 240.17a–3; 17 CFR 240.17a–4.

[61] As discussed in more detail below, the Commission also is proposing additional largely technical amendments to Rules 17a–3 and 17a–4.

[62] As discussed below in section II.B.2. of this release, the Commission is proposing that bank SBSDs and bank MSBSPs be subject to a limited reporting program of general information about their overall financial condition based on discrete elements of the reporting program the prudential regulators have established for banks.

[63] *See* 17 CFR 240.17a–3.

[64] Broker-dealer SBSDs and broker-dealer MSBSPs would be required to make and keep current all the records required of broker-dealers under Rule 17a–3, as proposed to be amended, plus the additional records required specifically of an SBSD or MSBSP.

[65] The proposed technical amendments are discussed below in section II.A.2.b. of this release.

[66] *See* proposed Rule 18a–5.

[67] The Commission is not proposing to include in proposed Rule 18a–5 requirements that would parallel requirements in paragraphs (a)(4), (a)(13), (a)(14), (a)(15), and (a)(16) of Rule 17a–3. These paragraphs require broker-dealers to make and keep current records with respect to activities that stand-alone SBSDs and stand-alone MSBSPs would not be expected or permitted to engage in or would not relate to a bank's business as an SBSD or MSBSP, or relate to rules that would not apply to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs. Further, the Commission is not proposing to include in proposed Rule 18a–5 requirements that would parallel requirements in paragraphs (a)(17), (a)(18), (a)(19), and (a)(20) of Rule 17a–3. These requirements are designed to enhance the ability of regulators, particularly State securities regulators, to conduct effective and efficient sales practice examinations. *See Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934,* 66 FR 55818. By adopting these requirements, the Commission enabled States to adopt and enforce similar rules on the State level under the National Securities Market Improvement Act of 1996. *See National Securities Markets Improvement Act of 1996,* Public Law 104–290, 110 Stat. 3416 (1996). As discussed below, the Commission has proposed external business conduct rules for SBSDs and MSBSPs and, as discussed below, the Commission is proposing recordkeeping requirements to support examinations for compliance with these proposed external business conduct rules.

[68] *Compare* paragraph (a), *with* paragraph (b) of proposed new Rule 18a–5.

[69] *See* 15 U.S.C. 78o–10(g)(1), (3), and (4).

[70] *See* 15 U.S.C. 78o–10(g)(2).

[71] *See* paragraph (a)(1) of Rule 17a–3, as proposed to be amended; paragraphs (a)(1) and (b)(1) of proposed Rule 18a–5.

[72] *See* paragraph (a)(3) of Rule 17a–3, as proposed to be amended; paragraphs (a)(3) and (b)(2) of proposed Rule 18a–5.

[73] *See* paragraph (a)(5)(ii) of Rule 17a–3, as proposed to be amended; paragraphs (a)(4)(ii) and (b)(3)(ii) of proposed Rule 18a–5.

[74] *See* paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended; paragraph (b)(4) of proposed Rule 18a–5.

[75] *See* paragraph (a)(7)(ii) of Rule 17a–3, as proposed to be amended; paragraphs (a)(5) and (b)(5) of proposed Rule 18a–5.

[76] *See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* Securities Exchange Act Release No. 63346 (Nov. 19, 2010), 75 FR 75207 (Dec. 2, 2010). *See also 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,* 78 FR 30968 (re-proposing certain aspects of Regulation SBSR).

proprietary trades of security-based swap transactions required under the proposed amendments to Rule 17a–3 and proposed Rule 18a–5: (1) The type of security-based swap; [77] (2) the reference security, index, or obligor; [78] (3) the date and time of execution; [79] (4) the effective date; [80] (5) the termination or maturity date; [81] (6) the notional amount; [82] (7) the unique transaction identifier; [83] and (8) the unique counterparty identifier.[84] The following data elements that would be required to be reported under proposed Rule 901 would also need to be documented in the securities record of security-based swap transactions required under the proposed amendments to Rule 17a–3 and proposed Rule 18a–5: (1) The reference security, index, or obligor; [85] (2) the unique transaction identifier; [86] (3) the unique counterparty identifier; [87] (4) whether the security-based swap is cleared or not cleared; [88] and (5) if cleared, identification of the clearing agency where the security-based swap is cleared.[89] In addition, the securities record for security-based swaps would parallel the securities record for securities by requiring a record of whether the security-based swap is a ''long'' or ''short'' position.[90]

Where 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.[91]

a. Amendments to Rule 17a–3 and Proposed Rule 18a–5

Undesignated Introductory Paragraph

Rule 17a–3, as proposed to be amended, would contain an undesignated introductory paragraph explaining that the rule applies to a broker-dealer, including a broker-dealer dually registered with the Commission as an SBSD or MSBSP.[92] The note further explains that an SBSD or MSBSP that is not dually registered as a broker-dealer (*i.e.,* a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP) is subject to the books and records requirements under proposed Rule 18a–5.[93]

Similarly, proposed Rule 18a–5 would contain an undesignated introductory paragraph explaining that the rule applies to an SBSD or an MSBSP that is not dually registered as a broker-dealer.[94] The note further explains that a broker-dealer that is dually registered as an SBSD or MSBSP is subject to the books and records requirements under Rule 17a–3.[95]

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.[96] The Commission is proposing to amend paragraph (a)(1) of Rule 17a–3 to require that the blotters specifically account for security-based swaps, and proposing to include parallel blotter requirements in paragraphs (a)(1) and (b)(1) of proposed Rule 18a–5 that are modeled on paragraph (a)(1) of Rule 17a–3, as proposed to be amended.[97] In particular, paragraph (a)(1) of Rule 17a–3, as proposed to be amended, would require broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to make and keep current blotters containing an itemized daily record of all transactions in securities, *including security-based swaps,* all receipts and deliveries of securities, all receipts and disbursements of cash, and all other debits and credits.[98] In order to document the attributes of security-based swaps, the proposed amendments also would require that such records show the contract price of the security-based swap, and include for each purchase and sale, the following information: (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 termination or maturity date; (6) the notional amount; (7) the unique transaction identifier; and (8) the unique counterparty identifier.[99]

Paragraph (a)(1) of proposed Rule 18a–5 mirrors paragraph (a)(1) of Rule 17a–3, as proposed to be amended, and therefore, stand-alone SBSDs and stand-alone MSBSPs would be required to make and keep current the same types of blotters as broker-dealers.[100] Paragraph (b)(1) of proposed Rule 18a–5 similarly would require bank SBSDs and bank MSBSPs to make and keep current the same types of blotters but only with respect to their security-based swap activities.[101]

General Ledger

Paragraph (a)(2) of Rule 17a–3 requires broker-dealers to make and

[77] *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* 75 FR 75213 (discussing the requirement in paragraph (c)(1) of proposed Rule 901 to report the asset class of the security-based swap).

[78] *See id.* at 75214 (discussing the requirement in paragraph (c)(2) of proposed Rule 901 to report the specific assets or issuers of any securities upon which the security-based swap is based).

[79] *See id.* at 75213 (discussing the requirement in paragraph (c)(4) of proposed Rule 901 to report the time and date of execution of the security-based swap).

[80] *See id.* at 75214 (discussing the requirement in paragraph (c)(5) of proposed Rule 901 to report the effective date of the security-based swap).

[81] *See id.* at 75214 (discussing the requirement in paragraph (c)(6) to of proposed Rule 901 to report the scheduled termination date of the security-based swap).

[82] *See id.* at 75214 (discussing the requirement in paragraph (c)(3) of proposed Rule 901 to report the notional amount of the security-based swap).

[83] *See id.* at 75221 (discussing the requirement in paragraph (g) of proposed Rule 901 to report the unique transaction identifier for the security-based swap).

[84] *See id.* at 75217–75218, 75221–75222 (discussing the requirement in paragraph (d) of proposed Rule 901 to report the unique identifier of the counterparty to the security-swap transaction).

[85] *See id.* at 75214 (discussing the requirement in paragraph (c)(2) of proposed Rule 901 to report the specific assets or issuers of any securities upon which the security-based swap is based).

[86] *See id.* at 75221 (discussing the requirement in paragraph (g) of proposed Rule 901 to report the unique transaction identifier for the security-based swap).

[87] *See id.* at 75217–75218, 75221–75222 (discussing the requirement in paragraph (d)(1)(i) of proposed Rule 901 to report the participant ID of the counterparty to the security-swap transaction).

[88] *See id.* at 75214 (discussing the requirement in paragraph (c)(9) of proposed Rule 901 to report the whether or not the security-based swap will be cleared by a clearing agency).

[89] *See id.* at 75218 (discussing the requirement in paragraph (d)(1)(vi) of proposed Rule 901 to report the name of the clearing agency if the security-based swap will be cleared).

[90] *Compare* 17 CFR 240.17a–3(a)(5), *with* paragraph (a)(5)(ii) of Rule 17a–3, as proposed to be amended, and paragraphs (a)(4)(ii) and (b)(3)(ii) of proposed Rule 18a–5.

[91] Proposed Rule 901 may be modified when adopted, which could include changing or eliminating certain data elements required to be reported under the rule. Any such modifications to the data elements could change the Commission's preliminary view on the comparability of the information to be recorded in the daily trading records and the information to be reported pursuant to proposed Rule 901.

[92] *See* undesignated introductory paragraph of Rule 17a–3, as proposed to be amended.

[93] *Id.*

[94] *See* undesignated introductory paragraph of proposed Rule 18a–5.

[95] *Id.*

[96] *See* 17 CFR 240.17a–3(a)(1).

[97] *See* paragraph (a)(1) of Rule 17a–3, as proposed to be amended; paragraphs (a)(1) and (b)(1) of proposed Rule 18a–5.

[98] *See* paragraph (a)(1) of Rule 17a–3, as proposed to be amended.

[99] *See id.*

[100] *Compare* paragraph (a)(1) of Rule 17a–3, as proposed to be amended, *with* paragraph (a)(1) of proposed Rule 18a–5.

[101] *See* paragraph (b)(1) of proposed Rule 18a–5.

keep current ledgers (or other records) reflecting all assets and liabilities, income and expense, and capital accounts.[102] 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. Because the overall financial condition of stand-alone SBSDs and stand-alone MSBSPs is a matter of regulatory concern for the Commission, the Commission is proposing to include a parallel provision in paragraph (a)(2) of proposed Rule 18a–5 that mirrors paragraph (a)(2) of Rule 17a–3.[103] Consequently, stand-alone SBSDs and stand-alone MSBSPs would be required to make and keep current the same types of general ledgers.[104]

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.[105] The Commission is proposing to amend paragraph (a)(3) of Rule 17a–3 to require that the ledgers (or other records) specifically account for security-based swaps, and to include parallel ledger requirements in paragraphs (a) and (b) of proposed Rule 18a–5 that are modeled on paragraph (a)(3) of Rule 17a–3, as proposed to be amended.[106] In particular, paragraph (a)(3) of Rule 17a–3 would be amended to include a requirement that broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, make and keep current ledger accounts (or other records) itemizing separately as to each security-based swap: (1) The type of security-based swap; (2) the reference security, index, or obligor; (3) date and time of execution; (4) the effective date; (5) the termination or maturity date; (6) the notional amount; (7) the unique transaction identifier; and (8) the unique counterparty identifier.[107]

Paragraph (a)(3) of Rule 18a–5 is modeled on paragraph (a)(3) of Rule 17a–3, as proposed to be amended, and therefore, stand-alone SBSDs and stand-alone MSBSPs would be required to make and keep current the same types of ledgers (or other records).[108] Unlike paragraph (a)(3) of Rule 17a–3, paragraph (a)(3) of proposed Rule 18a–5 would not refer to ''cash and margin accounts'' as these types of accounts involve activities that would not be permitted of stand-alone SBSDs and stand-alone MSBSPs because they are not registered as broker-dealers.[109] Paragraph (b)(2) of proposed Rule 18a–5 similarly would require bank SBSDs and bank MSBSPs to make 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.[110]

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'').[111] 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 is proposing to amend paragraph (a)(5) of Rule 17a–3 to require that the securities record specifically account for security-based swaps, and to include parallel securities record requirements in paragraphs (a) and (b) of proposed Rule 18a–5 that are modeled on paragraph (a)(5) of Rule 17a–3, as proposed to be amended.[112] Paragraph (a)(5) of Rule 17a–3, as proposed to be amended, would contain separate provisions: One for securities other than security-based swaps and one for security-based swaps.[113] Specifically, paragraph (a)(5)(i) would apply to securities other than security-based swaps and largely mirror the current text of paragraph (a)(5) of Rule 17a–3.[114] Paragraph (a)(5)(ii) would apply to security-based swaps.[115] This paragraph would require a broker-dealer, including a broker-dealer SBSD and broker-dealer MSBSP, to make and keep current a securities record or ledger reflecting separately for each security-based swap: (1) The reference security, index, or obligor; (2) the unique transaction identifier; (3) the unique counterparty identifier; (4) whether it is a ''long'' or ''short'' position in the security-based swap; (5) whether the security-based swap is cleared or not cleared; and (6) if cleared, identification of the clearing agency where the security-based swap is cleared.[116]

Paragraph (a)(4) of proposed Rule 18a–5 mirrors paragraph (a)(5) of Rule 17a–3 as proposed to be amended, and therefore, stand-alone SBSDs and stand-alone MSBSPs would be required to make and keep current the same type of securities record.[117] Paragraph (b)(3) of proposed Rule 18a–5 similarly would require bank SBSDs and bank MSBSPs to make and keep current a securities record of the firm's securities positions but only with respect to positions related to their business as an SBSD or MSBSP.[118]

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.[119] The Commission is proposing to amend paragraph (a)(6) of Rule 17a–3 to require

[102] *See* 17 CFR 240.17a–3(a)(2).

[103] *Compare* 17 CFR 240.17a–3(a)(2), *with* paragraph (a)(2) of proposed Rule 18a–5.

[104] *See* paragraph (a)(2) of proposed Rule 18a–5.

[105] *See* 17 CFR 240.17a–3(a)(3).

[106] *See* paragraph (a)(3) of Rule 17a–3, as proposed to be amended; paragraphs (a)(3) and (b)(2) of proposed Rule 18a–5.

[107] *See* paragraph (a)(3) of Rule 17a–3, as proposed to be amended.

[108] *Compare* paragraph (a)(3) of Rule 17a–3, as proposed to be amended, *with* paragraph (a)(3) of proposed Rule 18a–5.

[109] *See id.*

[110] *See* paragraph (b)(2) of proposed Rule 18a–5. The Commission has proposed a definition of *security-based swap customer* for the purposes of proposed Rule 18a–4. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70278. Proposed Rule 18a–4—which is modeled on Rule 15c3–3—would establish segregation requirements for SBSDs with respect to their security-based swap customers. *Id.* at 70274–70288. The term *security-based swap customer* would be defined in proposed Rule 18a–4 to mean any person from whom or on whose behalf the SBSD has received or acquired or holds funds or other property for the account of the person with respect to a cleared or non-cleared security-based swap transaction. *Id.* at 70278. The definition would exclude a person to the extent that person has a claim for funds or other property which by contract, agreement or understanding, or by operation of law, is part of the capital of the SBSD or is subordinated to all claims of security-based swap customers of the SBSD. *Id.*

[111] *See* 17 CFR 240.17a–3(a)(5).

[112] *See* paragraph (a)(5) of Rule 17a–3, as proposed to be amended; paragraphs (a)(4) and (b)(3) of proposed Rule 18a–5.

[113] *See* paragraphs (a)(5)(i)–(ii) of Rule 17a–3, as proposed to be amended.

[114] *Compare* 17 CFR 240.17a–3(a)(5), *with* paragraph (a)(5)(i) of Rule 17a–3, as proposed to be amended.

[115] *See* paragraph (a)(5)(ii) of Rule 17a–3, as proposed to be amended.

[116] *See id.*

[117] *Compare* paragraph (a)(5) of Rule 17a–3, as proposed to be amended, *with* paragraph (a)(4) of proposed Rule 18a–5.

[118] *See* paragraph (b)(3) of proposed Rule 18a–5.

[119] *See* 17 CFR 240.17a–3(a)(6).

broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to make and keep current a memorandum of each brokerage order, given or received for the purchase or sale of a security-based swap.[120] The Commission is not proposing to include a parallel provision in paragraph (a) of proposed Rule 18a–5 applicable to stand-alone SBSDs and stand-alone MSBSPs because these registrants would not be permitted to engage in the business of effecting brokerage orders in security-based swaps without registering as a broker-dealer or a bank.[121] The Commission is proposing to include a parallel provision that would be applicable to bank SBSDs and bank MSBSPs in paragraph (b) of proposed Rule 18a–5 that is modeled on paragraph (a)(6) of Rule 17a–3, as proposed to be amended.[122]

Paragraph (a)(6) of Rule 17a–3, as proposed to be amended, would contain separate provisions: One for brokerage orders involving securities other than security-based swaps and one for brokerage orders involving security-based swaps.[123] Specifically, proposed paragraphs (a)(6)(i)(A) and (B) would apply to securities other than security-based swaps and largely mirror the current text of paragraph (a)(6) of Rule 17a–3.[124] Proposed paragraph (a)(6)(ii) would apply to brokerage orders involving security-based swaps.[125] This paragraph would require a broker-dealer, including a broker-dealer SBSD and broker-dealer MSBSP, 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-based swap, whether executed or unexecuted. The memorandum would need to include information that is similar to the information currently required under Rule 17a–3 for brokerage orders.[126] In addition, to account for the attributes of security-based swaps, the memorandum would need to include: (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 termination or maturity date; (6) the notional amount; (7) the unique transaction identifier; and (8) the unique counterparty identifier.[127]

Paragraph (b)(4) of proposed Rule 18a–5 similarly would require bank SBSDs and bank MSBSPs to document key terms of brokerage orders but only with respect to security-based swaps.[128] Consequently, proposed paragraph (b)(4) would not contain a provision for securities that are not security-based swaps.[129] Instead, the entire paragraph mirrors paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended, which, as discussed above, relates solely to security-based swaps.[130]

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.[131] Generally, paragraph (a)(7) of Rule 17a–3 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 is proposing to amend paragraph (a)(7) of Rule 17a–3 to require the terms of security-based swap transactions to be documented, and to include parallel memorandum requirements in paragraphs (a) and (b) of proposed Rule 18a–5 that are modeled on paragraph (a)(7) of Rule 17a–3, as proposed to be amended.[132] Paragraph (a)(7) of Rule 17a–3, as proposed to be amended, would contain two separate provisions: One for securities other than security-based swaps and one for security-based swaps.[133] Specifically, proposed paragraph (a)(7)(i) would apply to securities other than security-based swaps and largely would mirror the current text of paragraph (a)(7) of Rule 17a–3.[134] Paragraph (a)(7)(ii) would apply to security-based swaps.[135] This paragraph would require broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to make and keep current a memorandum documenting each security-based swap transaction for the account of the broker-dealer. The memorandum would need to include certain information regarding the purchase or sale of a security-based swap for the account of the broker-dealer that is similar to the information currently required under paragraph (a)(7) of Rule 17a–3.[136] In addition, to account for the attributes of security-based swaps, the memorandum would need to include: (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 termination or maturity date; (6) the notional amount; (7) the unique transaction identifier; and (8) the unique counterparty identifier.[137]

Paragraph (a)(5) of proposed Rule 18a–5 would require stand-alone SBSDs and stand-alone MSBSPs to make memoranda of proprietary transactions but only with respect to security-based swaps.[138] This is because a stand-alone SBSD or a stand-alone MSBSP would need to be registered as a broker-dealer

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[120] *See* paragraph (a)(6) of Rule 17a–3, as proposed to be amended.

[121] Generally, persons engaged in brokerage activities are required to register as brokers under section 15(b) of the Exchange Act. *See* 15 U.S.C. 78o(b). Banks are permitted to engage in certain limited securities brokerage activities. Specifically, section 3(a)(4) of the Exchange Act provides eleven exceptions to broker-dealer registration for banks. *See* 15 U.S.C. 78c(a)(4). In addition, the Commission and the Federal Reserve promulgated joint rules establishing further exemptions permitting banks to engage in certain securities brokerage activities without registering as a broker-dealer. *See Definitions of Terms and Exemptions Relating to the ''Broker'' Exceptions for Banks,* Exchange Act Release No. 56501 (Sept. 24, 2007), 72 FR 56514 (Oct. 3, 2007); 17 CFR 247.100–781. These exceptions and exemptions permit a bank to act as a broker or agent in securities transactions provided they satisfy certain conditions. Section 716 of the Dodd-Frank Act (''Swap Push-Out Provision'') generally prohibits providing certain types of federal assistance, including FDIC insurance, to SBSDs and MSBSPs with respect to any swap, security-based swap, or other activity of the SBSD or MSBSP. *See* Public Law 111–203, 716. The Swap Push-Out Provision excludes MSBSPs that are insured depository institutions. *See* Public Law 111–203, 716(b)(2)(B). Further, SBSDs that are insured depository institutions are permitted to engage in certain swap and security-based swap activities under certain conditions and still qualify for federal assistance. *See* Public Law 111–203, 716(d) through (f). Thus, a bank SBSD or bank MSBSP 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 proposed Rule 18a–5 would apply.

[122] *See* paragraph (b)(4) of proposed Rule 18a–5.

[123] *See* paragraph (a)(6) of Rule 17a–3, as proposed to be amended. Rule 17a–3 currently contains paragraphs (a)(6)(i) and (ii). *See* 17 CFR 240.17a–3(a)(6)(i) and (ii). Under the amendments, paragraph (a)(6)(i) of Rule 17a–3 would be redesignated as paragraph (a)(6)(i)(A) and paragraph (a)(6)(ii) would be redesignated as paragraph (a)(6)(i)(B). The new requirement to make and keep current a memorandum of each security-based swap brokerage order would be contained in paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended.

[124] *Compare* 17 CFR 240.17a–3(a)(6)(i) and (ii), *with* paragraphs (a)(6)(i)(A) and (B) of Rule 17a–3, as proposed to be amended.

[125] *See* paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended.

[126] *Compare* 17 CFR 240.17a–3(a)(6)(i), *with* paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended.

[127] *See* paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended.

[128] *See* paragraph (b)(4) of proposed Rule 18a–5.

[129] *See id.*

[130] *Compare* paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended, *with* paragraph (b)(4) of proposed Rule 18a–5.

[131] *See* 17 CFR 240.17a–3(a)(7).

[132] *See* paragraph (a)(7) of Rule 17a–3, as proposed to be amended; paragraphs (a)(5) and (b)(5) of proposed Rule 18a–5.

[133] *See* paragraphs (a)(7)(i) and (ii) of Rule 17a–3, as proposed to be amended.

[134] *Compare* 17 CFR 240.17a–3(a)(7), *with* paragraph (a)(7)(i) of Rule 17a–3, as proposed to be amended.

[135] *See* paragraph (a)(7)(ii) of Rule 17a–3, as proposed to be amended.

[136] *Compare* 17 CFR 240.17a–3(a)(7), *with* paragraph (a)(7)(ii) of Rule 17a–3, as proposed to be amended.

[137] *See* paragraph (a)(7)(ii) of Rule 17a–3, as proposed to be amended.

[138] *See* paragraph (a)(5) of proposed Rule 18a–5.

(and therefore would be subject to Rule 17a–3) (or, in certain circumstances, a bank) to deal in securities other than security-based swaps. Paragraph (b)(5) of proposed Rule 18a–5 would require bank SBSDs and bank MSBSPs to make memoranda of proprietary transactions but also only with respect to security-based swaps.[139]

Confirmations

Paragraph (a)(8) of Rule 17a–3 requires broker-dealers to make and keep current copies of confirmations of purchases and sales of securities.[140] The Commission is proposing to amend paragraph (a)(8) to require that confirmations of security-based swaps be documented, and to include analogous confirmation requirements in paragraphs (a) and (b) of proposed Rule 18a–5 that are modeled on paragraph (a)(8) of Rule 17a–3, as proposed to be amended.[141] Paragraph (a)(8) of Rule 17a–3, as proposed to be amended, would contain separate provisions: One for securities other than security-based swaps and one for security-based swaps.[142] Specifically, proposed paragraph (a)(8)(i) would apply to confirmations of securities transactions other than security-based swap transactions and largely mirror the current text of paragraph (a)(8) of Rule 17a–3.[143] Proposed paragraph (a)(8)(ii) would apply to confirmations of security-based swap transactions.[144] As discussed above, section 15F(i)(2) of the Exchange Act provides that the Commission shall adopt rules governing documentation standards for SBSDs and MSBSPs.[145] Pursuant to section 15F(i)(2), the Commission proposed Rule 15Fi–1 under the Exchange Act (''Rule 15Fi–1'') to prescribe standards related to timely and accurate confirmation and documentation of security-based swaps.[146] Under this proposed rule, SBSDs and MSBSPs would be required to acknowledge and, thereafter, verify security-based swap transactions.[147] Consequently, paragraph (a)(8)(ii) of Rule 17a–3 would require broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to make and keep current copies of the security-based swap trade acknowledgments and verifications made pursuant to proposed Rule 15Fi–1.[148]

Paragraph (a)(6) of proposed Rule 18a–5 would require stand-alone SBSDs and stand-alone MSBSPs to make and keep current copies of confirmations of all purchases or sales of securities, which would include securities other than security-based swaps.[149] Paragraph (a)(6) also would specify that, for security-based swap transactions, stand-alone SBSDs and stand-alone MSBSPs would need to make and keep current copies of the security-based swap trade acknowledgments and verifications made pursuant to proposed Rule 15Fi–1.[150] Paragraph (b)(6) would require bank SBSDs and bank MSBSPs to make and keep current copies of all confirmations of purchases and sales of securities but only if related to their business as an SBSD or MSBSP.[151] This would require a bank SBSD or bank MSBSP to make and keep current copies of confirmations relating to transactions in securities, other than security-based swaps, if the transaction was related to their business as an SBSD or MSBSP. For example, this requirement would apply if the bank SBSD or bank MSBSP entered into a transaction in the security underlying a security-based swap to hedge the risk of the security-based swap. Paragraph (b)(6) also would specify that, for security-based swap transactions, bank SBSDs and bank MSBSPs would need to make and keep current copies of the security-based swap trade acknowledgments and verifications made pursuant to proposed Rule 15Fi–1.[152]

Accountholder Information

Paragraph (a)(9) of Rule 17a–3 requires broker-dealers to make and keep current certain information with respect to each securities accountholder.[153] The Commission is proposing to amend paragraph (a)(9) to require certain information with respect to security-based swap accountholders, and to include similar requirements in paragraphs (a) and (b) of proposed Rule 18a–5.[154] The amendments to Rule 17a–3 would add a new paragraph (a)(9)(iv).[155] This paragraph would require broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to make and keep current, in the case of a security-based swap account: (1) A record of the unique counterparty identifier of the accountholder; (2) the name and address of accountholder; and (3) the signature of each person authorized to transact business in the security-based swap account.[156] Consequently, in the case of accounts of legal entities (*e.g.,* a corporation, partnership, or trust), signatures would be required from persons authorized by the entity to transact business in the account.

Paragraphs (a)(7) and (b)(7) of proposed Rule 18a–5 mirror paragraph (a)(9)(iv) of Rule 17a–3, as proposed to be amended.[157] Consequently, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be required to make and keep current the same types of records with respect to security-based swap accountholders.

Options Positions

Paragraph (a)(10) of Rule 17a–3 requires broker-dealers to make and keep current a record of all options positions.[158] The Commission is not proposing to amend paragraph (a)(10) of Rule 17a–3 to account for security-based swaps.[159] In addition, because the records required under this paragraph are not specific to security-based swaps, the Commission is not proposing to include an analogous provision in paragraph (b) applicable to bank SBSDs and bank MSBSPs. However, in order to facilitate the monitoring of the financial condition of stand-alone SBSDs and stand-alone MSBSPs, the Commission is proposing to include a parallel provision in paragraph (a)(8) of proposed Rule 18a–5 applicable to stand-alone SBSDs and stand-alone MSBSPs.[160] Consequently, under the

[139] *See* paragraph (b)(5) of proposed Rule 18a–5.

[140] *See* 17 CFR 240.17a–3(a)(8). *See also* 17 CFR 240.10b–10 (a requirement that broker-dealers disclose specified information to customers at or before completion of a securities transaction).

[141] *See* paragraph (a)(8) of Rule 17a–3, as proposed to be amended; paragraphs (a)(6) and (b)(6) of proposed Rule 18a–5.

[142] *See* paragraphs (a)(8)(i) and (a)(8)(ii) of Rule 17a–3, as proposed to be amended.

[143] *Compare* paragraph (a)(8)(i) of Rule 17a–3, as proposed to be amended, *with* 17 CFR 240.17a–3(a)(8).

[144] *See* paragraph (a)(8)(ii) of Rule 17a–3, as proposed to be amended.

[145] *See* 15 U.S.C. 78o–10(i)(2).

[146] *See Trade Acknowledgment and Verification of Security-Based Swap Transactions,* 76 FR 3859.

[147] *Id.*

[148] *See* paragraph (a)(8)(ii) of Rule 17a–3, as proposed to be amended.

[149] *See* paragraph (a)(6) of proposed Rule 18a–5.

[150] *Id.*

[151] *See* paragraph (b)(6) of proposed Rule 18a–5.

[152] *Id.*

[153] *See* 17 CFR 240.17a–3(a)(9).

[154] *See* paragraph (a)(9) of Rule 17a–3, as proposed to be amended; paragraphs (a)(7) and (b)(7) of proposed Rule 18a–5.

[155] *See* paragraph (a)(9)(iv) of Rule 17a–3, as proposed to be amended.

[156] *Id.*

[157] *Compare* paragraph (a)(9)(iv) of Rule 17a–3, as proposed to be amended, *with* paragraphs (a)(7) and (b)(7) of proposed Rule 18a–5.

[158] *See* 17 CFR 240.17a–3(a)(10).

[159] As discussed below in section II.A.2.b. of this release, the Commission is proposing technical amendments to paragraph (a)(10) of Rule 17a–3.

[160] *See* paragraph (a)(8) of proposed Rule 18a–5. The second sentence of paragraph (a)(10) of Rule 17a–3 applies only to a special class of broker-dealers that limit their activities to dealing in OTC derivatives (''OTC derivatives dealers''). *See* 17 CFR 240.17a–3(a)(10); *OTC Derivatives Dealers,* Exchange Act Release No. 40594 (Oct. 23, 1998), 63

proposed rule, these registrants would be required to make and keep current the same type of records broker-dealers must keep: A record of all puts, calls, spreads, straddles, and other options in which the stand-alone SBSD or stand-alone MSBSP has any direct or indirect interest or which the stand-alone SBSD or stand-alone MSBSP has granted or guaranteed, containing, at a minimum, an identification of the security and the number of units involved.[161]

Trial Balances and Computation of Net Capital

Paragraph (a)(11) of Rule 17a–3 requires broker-dealers 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 Rule 15c3–1.[162] The Commission is not proposing to amend paragraph (a)(11) to account for security-based swaps because the impact of security-based swaps on those computations is reflected in the amendments to the capital rules that have been proposed by the Commission to apply to broker-dealer SBSDs and stand-alone SBSDs.[163] In addition, because the records required under the rule are not specific to security-based swaps and because bank SBSDs and bank MSBSPs will be subject to capital requirements administered by the prudential regulators, the Commission is not proposing to include a parallel provision in paragraph (b) of proposed Rule 18a–5 applicable to these types of registrants.

The Commission, however, is proposing to include a parallel requirement in paragraph (a)(9) of proposed Rule 18a–5 applicable to stand-alone SBSDs and stand-alone MSBSPs because the types of records required under paragraph (a)(11) of Rule 17a–3 would facilitate the review and monitoring of the financial condition and regulatory capital of stand-alone SBSDs and stand-alone MSBSPs. As noted above, the Commission will administer the capital rules applicable to stand-alone SBSDs and stand-alone MSBSPs.[164] Under Paragraph (a)(9) of proposed Rule 18a–5, stand-alone SBSDs and stand-alone MSBSPs would be required to make and keep current similar records to those required under paragraph (a)(11) of Rule 17a–3 but in relation to the proposed capital rules for these entities: (1) Proposed Rule 18a–1 in the case of stand-alone SBSDs; and (2) proposed Rule 18a–2 in the case of stand-alone MSBSPs.[165] Specifically, paragraph (a)(9) would require stand-alone SBSDs and stand-alone MSBSPs to make and keep current a record of the proof of money balances of all ledger accounts in the form of trial balances, and a record as of the trial balance date of the computation of net capital pursuant to proposed Rule 18a–1 or the computation of tangible net worth pursuant to proposed Rule 18a–2. The trial balances and computations would need to be prepared at least once a month in relation to the financial reporting on Form SBS that the Commission is proposing for these registrants under proposed Rule 18a–7.[166]

Associated Persons

Paragraph (a)(12) of Rule 17a–3 requires broker-dealers to make and keep current records of information about associated persons of the broker-dealer.[167] This requirement will apply to broker-dealer SBSDs and broker-dealer MSBSPs and, therefore, the Commission is not proposing to amend paragraph (a)(12) to account for security-based swaps.[168] The Commission, however, is proposing to include parallel provisions in paragraphs (a) and (b) of proposed Rule 18a–5.[169] Consequently, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be required to make and keep current a questionnaire or application for employment for each associated person, which must include the associated person's identifying information, business affiliations for the past ten years, relevant disciplinary history, relevant criminal record, and place of business, among other things.[170]

Further, the Commission is proposing to amend the definition of *associated person* in Rule 17a–3 to include in the definition a person associated with an SBSD or MSBSP as defined under section 3(a)(70) of the Exchange Act.[171] Section 761 of the Dodd-Frank Act added section 3(a)(70) to the Exchange Act to define the terms *person associated with a security-based swap dealer or major security-based swap participant* and *associated person of a security-based swap dealer or major security-based swap participant.*[172] Paragraph (c)(1) of proposed Rule 18a–5 similarly would provide that the term *associated person* means for the purposes of proposed Rule 18a–5 a person associated with an SBSD or MSBSP as defined under section 3(a)(70) of the Exchange Act.[173] Paragraph (c)(2) of proposed Rule 18a–5 would limit the definition of the term *associated person* for purposes of the rule and with respect to bank SBSDs and bank MSBSPs to persons whose activities relate to the conduct of business as an SBSD or MSBSP.[174]

Liquidity Stress Test

Funding liquidity risk has been defined as the risk that a firm will not be able to efficiently meet both expected and unexpected current and future cash flow and collateral needs without adversely impacting either the daily operations or the financial condition of the firm.[175] The financial crisis of 2008

FR 59362 (Nov. 3, 1998). Consequently, it is not included in paragraph (a)(8) of proposed Rule 18a–5.

[161] *See* paragraph (a)(8) of proposed Rule 18a–5.

[162] *See* 17 CFR 240.17a–3(a)(11).

[163] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70217–70257. As discussed below in section II.A.2.b. of this release, the Commission is proposing technical amendments to paragraph (a)(11) of Rule 17a–3.

[164] *See* paragraph (a)(9) of proposed Rule 18a–5.

[165] *See id. See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213 (proposing Rule 18a–1 applicable to stand-alone SBSDs and Rule 18a–2 applicable to nonbank MSBSPs that would establish capital standards for these registrants).

[166] The proposed requirements to file Form SBS are discussed below in section II.B.2. of this release.

[167] *See* 17 CFR 240.17a–3(a)(12).

[168] As discussed below in section II.A.2.b. of this release, the Commission is proposing technical amendments to paragraph (a)(12) of Rule 17a–3.

[169] *Compare* 17 CFR 240.17a–3(a)(12), *with* paragraphs (a)(10) and (b)(8) of proposed Rule 18a–5.

[170] *See* paragraph (a)(10) and (b)(8) of proposed Rule 18a–5. Unlike paragraph (a)(12) of Rule 17a–3, paragraphs (a)(10) and (b)(8) do not permit applications of registration made by the associated person to an SRO to satisfy the requirements because the Dodd-Frank Act did not establish SROs for SBSDs and MSBSPs. *Compare* 17 CFR 240.17a–3(a)(12), *with* paragraph (a)(10) and (b)(8) of proposed Rule 18a–5.

[171] *See* paragraph (f)(4) of Rule 17a–3, as proposed to be amended; 15 U.S.C. 78c(a)(70).

[172] *See* Public Law 111–203, 761; 15 U.S.C. 78c(a)(70).

[173] *See* paragraph (c)(1) of proposed Rule 18a–5.

[174] *See* paragraph (c)(2) of proposed Rule 18a–5.

[175] *See* Joint Forum, Bank for International Settlements, *The management of liquidity risk in financial groups,* 1 n.1 (May 2006), *available at http://www.bis.org/publ/joint16.pdf. See also* Basel Committee on Banking Supervision, Bank for International Settlements, *Principles for Sound Liquidity Risk Management and Supervision,* n.2 (Sept. 2008), *available at http://www.bis.org/publ/bcbs144.pdf* (''Funding liquidity risk is the risk that the firm will not be able to meet efficiently both expected and unexpected current and future cash flow and collateral needs without affecting either daily operations or the financial condition of the firm. Market liquidity risk is the risk that a firm cannot easily offset or eliminate a position at the market price because of inadequate market depth or market disruption.''); *Amendments to Financial Responsibility Rules for Broker-Dealers,* Exchange

Continued

demonstrated that the funding liquidity risk management practices of certain individual financial institutions were not sufficient to handle a liquidity stress event of that magnitude.[176] In particular, it has been observed that the stress tests utilized at the time by financial institutions had weaknesses [177] and the amount of contingent liquidity they maintained to replace external sources of funding was insufficient to cover the institutions' liquidity needs.[178]

The Commission has proposed that certain broker-dealers, including broker-dealer SBSDs, and certain stand-alone SBSDs be subject to liquidity stress test requirements.[179] In particular, the Commission has proposed amendments to Rule 15c3–1 that would establish liquidity stress test requirements for broker-dealers that have been approved to use internal models to calculate market and credit risk charges when computing net capital (''ANC broker-dealers''), which would include broker-dealer SBSDs approved to use internal models for this purpose (''ANC broker-dealer SBSDS'').[180] The Commission has proposed identical liquidity stress test requirements for stand-alone SBSDs that are approved to use internal models to calculate market and credit risk charges when computing net capital under proposed Rule 18a–1 (''stand-alone ANC SBSDs'').[181] Under the proposed liquidity stress test requirements, ANC broker-dealers and stand-alone ANC SBSDs would be required, among other things, to conduct a liquidity stress test at least monthly that takes into account certain assumed conditions lasting for thirty consecutive days and to establish a written contingency funding plan.

To promote compliance with these proposed requirements and the risk management practices of ANC broker-dealers, the Commission is proposing to amend Rule 17a–3 to add a requirement that ANC broker-dealers, including ANC broker-dealer SBSDs, make and keep current a report of the results of the monthly liquidity stress test, a record of the assumptions underlying the liquidity stress test, and the liquidity funding plan required under the proposed amendments to Rule 15c3–1.[182] The Commission is not proposing to include a similar provision in paragraph (b) of proposed Rule 18a–5 applicable to bank SBSDs because these registrants would not be subject to the Commission's capital requirements, including the funding liquidity stress test requirement. However, the Commission is proposing to include a parallel provision applicable to stand-alone SBSDs in paragraph (a) of proposed Rule 18a–5 that is modeled on the requirement that would be added to Rule 17a–3, as proposed to be amended.[183] Consequently, stand-alone ANC SBSDs would be required to make and keep current a report of the results of the monthly liquidity stress test, a record of the assumptions underlying the liquidity stress test, and the liquidity funding plan.[184]

Account Equity and Margin Calculations Under Proposed Rule 18a–3

The Commission has proposed Rule 18a–3, which would establish margin requirements with respect to non-cleared security-based swaps applicable to nonbank SBSDs and nonbank MSBSPs.[185] Proposed Rule 18a–3 would require nonbank SBSDs, among other things, to perform two daily calculations for each security-based swap account: The amount of equity in the account and a margin amount for the account.[186] Nonbank MSBSPs would be required to calculate only the equity in the account.[187] The Commission is proposing to require that nonbank SBSDs and nonbank MSBSPs make and keep current a record of the daily calculations that would be required under Rule 18a–3 by amending Rule 17a–3 and including a parallel provision in paragraph (a) of proposed Rule 18a–5.[188] The objective of these requirements is to promote compliance with proposed Rule 18a–3, to require records to assist nonbank SBSDs and nonbank MSBSPs in managing their credit risk to security-based swap counterparties, and to assist Commission examiners in reviewing

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Act Release No. 55432 (Mar. 9, 2007), 72 FR 12862, 12870 n.72 (Mar. 19, 2007) (''Liquidity risk includes the risk that a firm will not be able to unwind or hedge a position or meet cash demands as they become due.''); *Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies,* Federal Reserve, 77 FR 594 (Jan. 5, 2012) (proposing a rule to require certain large financial institutions to conduct liquidity stress testing at least monthly).

[176] *See* Senior Supervisors Group, *Risk Management Lessons from the Global Bank Crisis of 2008,* (Oct. 21, 2009), *available at http://www.sec.gov/news/press/2009/report102109.pdf.*

[177] *Id.* at 14 (''Market conditions and the deteriorating financial state of firms exposed weaknesses in firms' approaches to liquidity stress testing, particularly with respect to secured borrowing and contingent funding needs. These deteriorating conditions underscored the need for greater consideration of the overlap between systemic and firm-specific events and longer time horizons, and the connection between stress tests and business-as-usual liquidity management.'').

[178] *Id.* at 15 (''Interviewed firms typically calculated and maintained a measurable funding cushion, such as 'months of coverage,' which is conceptually similar to rating agencies' twelve-month liquidity alternatives analyses. Some institutions were required to maintain a liquidity cushion that could withstand the loss of *unsecured* funding for one year. Many institutions found that this metric did not capture important elements of stress that the organizations faced, such as the loss of secured funding and demands for collateral to support clearing and settlement activity and to mitigate the risks of accepting novations.'') (emphasis in the original).

[179] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70252–70254 (proposing funding liquidity stress test requirements).

[180] *Id.* Rule 15c3–1 requires that a broker-dealer perform two calculations: (1) A computation of the minimum amount of net capital the firm must maintain; and (2) a computation of the amount of net capital the firm is maintaining. *See* 17 CFR 240.15c3–1. In computing net capital, a broker-dealer must, among other things, make certain adjustments to net worth such as deducting illiquid assets and taking other capital charges and adding qualifying subordinated loans. *See* 17 CFR 240.15c3–1(c)(2)(i) through (xiii). The amount remaining after these deductions is defined as *tentative net capital. See* 17 CFR 240.15c3–1(c)(15). The final step in computing net capital is to take prescribed percentage deductions (''standardized haircuts'') from the mark-to-market value of the proprietary positions (*e.g.,* securities, money market instruments, and commodities) that are included in tentative net capital. *See* 17 CFR 240.15c3–1(c)(2)(vi). The standardized haircuts are designed to account for the market risk inherent in these positions and to create a buffer of liquidity to protect against other risks associated with the securities business. ANC broker-dealers and OTC derivatives dealers are permitted, with Commission approval, to calculate net capital using internal models as the basis for taking market risk and credit risk charges in lieu of the standardized haircuts for classes of positions for which they have been approved to use models. *See* 17 CFR 240.15c3–1(a)(5) and (a)(7); 17 CFR 240.15c3–1e; 17 CFR 240.15c3–1f. Broker-dealer SBSDs that seek to use internal models to calculate market and credit risk charges when computing net capital would need to be approved to operate as ANC broker-dealers. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70217–70256. Theoretically, a broker-dealer MSBSP could be authorized to operate as an ANC broker-dealer, in which case it would be subject to the liquidity stress test requirement.

[181] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70252–70254.

[182] *See* paragraph (a)(24) of Rule 17a–3, as proposed to be amended.

[183] *Compare* paragraph (a)(24) of Rule 17a–3, as proposed to be amended, *with* paragraph (a)(11) of proposed Rule 18a–5.

[184] *See* paragraph (a)(11) of proposed Rule 18a–5.

[185] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70257–70274.

[186] *Id.* at 70260–70262.

[187] *Id.* at 70262–70263.

[188] *See* paragraph (a)(25) of Rule 17a–3, as proposed to be amended; paragraph (a)(12) of proposed Rule 18a–5. *See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70257–70274.

compliance with those rule requirements.[189]

Possession or Control Requirements Under Proposed Rule 18a–4

Rule 15c3–3 under the Exchange Act (''Rule 15c3–3'') requires a broker-dealer that carries customer securities or cash (a ''carrying broker-dealer'') to maintain physical possession or control over customers' fully paid and excess margin securities.[190] Physical possession or control means the carrying broker-dealer must hold these securities in one of several locations specified in Rule 15c3–3 and free of liens or any other interest that could be exercised by a third party to secure an obligation of the broker-dealer.[191] Permissible locations include a bank, as defined in section 3(a)(6) of the Exchange Act, and a clearing agency.[192] The Commission has proposed Rule 18a–4 to establish security-based swap customer protection requirements that are modeled on the requirements in Rule 15c3–3.[193] Paragraph (b)(1) of proposed Rule 18a–4 would require an SBSD to promptly obtain and thereafter maintain physical possession or control of all excess securities collateral carried for the accounts of security-based swap customers.[194] The physical possession or control requirement of paragraph (b)(1) of proposed Rule 18a–4 would prohibit SBSDs from lending or hypothecating excess securities collateral of security-based swap customers, and would require SBSDs to either physically hold excess securities collateral or to custody the collateral in a satisfactory control location.[195] Paragraph (b)(2) of proposed new Rule 18a–4 would identify five satisfactory control locations for excess securities collateral.[196] Paragraph (b)(3) of Rule 18a–4 would require that each business day the SBSD must determine from its books and records the quantity of excess securities collateral that the firm had in its possession or control as of the close of the previous business day and the quantity of excess securities collateral the firm did not have in its possession or control on that day.[197] The paragraph would provide further that the SBSD must take steps to retrieve excess securities collateral from certain specifically identified non-control locations if securities and money market instruments of the same issue and class are at these locations.[198]

The Commission is proposing to require that all SBSDs make and keep current a record of compliance with the possession or control requirement under proposed Rule 18a–4 by amending Rule 17a–3 to add this new requirement and including parallel requirements in paragraphs (a) and (b) of proposed Rule 18a–5.[199] Consequently, this new recordkeeping requirement would apply to broker-dealer SBSDs, stand-alone SBSDs, and bank SBSDs.[200] The records required under this proposal would need to document that each business day the firm took the steps required under paragraph (b) of proposed Rule 18a–3 described above. The objective of this new recordkeeping requirement would be to promote compliance with the possession or control requirements of proposed Rule 18a–4 and to assist Commission examiners in reviewing compliance.

Customer Reserve Requirements Under Proposed Rule 18a–4

Rule 15c3–3 requires a carrying broker-dealer to maintain a reserve of funds or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers.[201] The amount of net cash owed to customers is computed pursuant to a formula set forth in Exhibit A to Rule 15c3–3.[202] The Commission has proposed a parallel requirement in proposed Rule 18a–4.[203] Proposed Rule 18a–4 would require an SBSD, among other things, to maintain a security-based swap customer reserve

[189] As discussed above in section I. of this release, section 15F(e)(1)(A) of the Exchange Act provides that the prudential regulators shall prescribe capital and margin requirements for bank SBSDs and bank MSBSPs. *See* 15 U.S.C. 78o–10(e)(1)(A).

[190] *See* 17 CFR 240.15c3–3(d). The term *fully paid securities* includes all securities carried for the account of a customer in a special cash account as defined in Regulation T promulgated by the Federal Reserve, as well as margin equity securities within the meaning of Regulation T which are carried for the account of a customer in a general account or any special account under Regulation T during any period when section 8 of Regulation T (12 CFR 220.8) specifies that margin equity securities shall have no loan value in a general account or special convertible debt security account, and all such margin equity securities in such account if they are fully paid: provided, however, that the term *fully paid securities* shall not apply to any securities which are purchased in transactions for which the customer has not made full payment. *See* 17 CFR 240.15c3–3(a)(3). The term *margin securities* means those securities carried for the account of a customer in a general account as defined in Regulation T, as well as securities carried in any special account other than the securities referred to in paragraph (a)(3) of Rule 15c3–3. *See* 17 CFR 240.15c3–3(a)(4). The term *excess margin securities* means those securities referred to in paragraph (a)(4) of Rule 15c3–3 carried for the account of a customer having a market value in excess of 140% of the total of the debit balances in the customer's account or accounts encompassed by paragraph (a)(4) of Rule 15c3–3 which the broker-dealer identifies as not constituting margin securities. *See* 17 CFR 240.15c3–3(a)(5).

[191] *See* 17 CFR 240.15c3–3(c). Customer securities held by the carrying broker-dealer are not assets of the firm. Rather, the carrying broker-dealer holds them in a custodial capacity and the possession or control requirement is designed to ensure that the carrying broker-dealer treats them in a manner that allows for their prompt return.

[192] *Id.*

[193] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70274–70288. As broker-dealers, broker-dealer SBSDs and broker-dealer MSBSPs would be subject to Rule 15c3–3 with respect to customers that are not security-based swap customers and, in the case of a broker-dealer SBSD, Rule 18a–4 with respect to security-based swap customers. *Id.* at 70277 (''A broker-dealer SBSD would need to treat security-based swap accounts separately from other securities accounts and, consequently, would need to perform separate possession or control and reserve account computations for security-based swap accounts and other securities accounts. The former would be subject to the possession or control and reserve account requirements in proposed new Rule 18a–4 and the latter would continue to be subject to the analogous requirements in Rule 15c3–3. This would keep separate the segregated customer property related to security-based swaps from customer property related to other securities, including property of retail securities customers.'').

[194] Under proposed Rule 18a–4, the term *excess securities collateral* would be defined to mean securities and money market instruments carried for the account of a security-based swap customer that have a market value in excess of the current exposure of the SBSD to the customer, excluding, under certain specified conditions, securities or money market instruments used to meet a margin requirement of a registered security-based swap clearing agency or of another SBSD. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70279. As noted above, the term *security-based swap customer* would be defined to mean any person from whom or on whose behalf the SBSD has received or acquired or holds funds or other property for the account of the person with respect to a cleared or non-cleared security-based swap transaction. *Id.* at 70278. The definition would exclude a person to the extent that person has a claim for funds or other property which by contract, agreement or understanding, or by operation of law, is part of the capital of the SBSD or is subordinated to all claims of security-based swap customers of the SBSD. *Id.*

[195] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70278.

[196] *Id.* at 70280–70281.

[197] *Id.* at 70281–70282.

[198] *Id.* at 70281.

[199] *See* paragraph (a)(26) of Rule 17a–3, as proposed to be amended; paragraphs (a)(13) and (b)(9) of proposed Rule 18a–5.

[200] *See id.*

[201] *See* 17 CFR 240.15c3–3(e). The term *qualified security* is defined in Rule 15c3–3 to mean a security issued by the U.S. or a security in respect of which the principal and interest are guaranteed by the U.S. *See* 17 CFR 240.15c3–3(a)(6).

[202] *See* 17 CFR 240.15c3–3a.

[203] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70282–70287. As noted above, broker-dealer SBSDs and broker-dealer MSBSPs would be subject to Rule 15c3–3 with respect to customers that are not security-based swap customers and, in the case of a broker-dealer SBSD, Rule 18a–4 with respect to security-based swap customers.

account at an unaffiliated bank separate from any other bank account of the SBSD.[204] Further, it would provide that the SBSD must at all times maintain in the security-based swap customer reserve account cash and/or qualified securities in amounts computed daily in accordance with Exhibit A to proposed Rule 18a–4.[205]

The Commission is proposing to require that all types of SBSDs make and keep current a record of their reserve computations under proposed Rule 18a–4 by amending Rule 17a–3 to add the requirement and to include parallel requirements in paragraphs (a) and (b) of proposed Rule 18a–5.[206] The objective of this requirement would be to promote SBSD compliance with the customer reserve computation requirement and to assist Commission examiners in reviewing compliance.

Unverified Transactions

Prudent practice requires counterparties to promptly confirm the terms of executed OTC derivatives transactions.[207] Consequently, the Commission proposed Rule 15Fi–1 to promote the efficient operation of the security-based swap market and to facilitate market participants' management of the risk of trading in security-based swaps.[208] Among other things, proposed Rule 15Fi–1 would require broker-dealers, SBSDs, and MSBSPs 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.[209]

To promote compliance with proposed Rule 15Fi–1 and the risk management practices of broker-dealers, SBSDs, and MSBSPs, the Commission is proposing to amend Rule 17a–3 to add a requirement to make a record of each security-based swap trade acknowledgment that is not verified within five business days of execution and to include parallel provisions in paragraphs (a) and (b) of proposed Rule 18a–5.[210] Consequently, all types of SBSDs and MSBSPs would be required to make and keep current these records. While the Commission did not prescribe a timeframe in proposed Rule 15Fi–1 within which security-based swap trade acknowledgements would need to be verified, the proposed rule does require procedures reasonably designed to obtain ''prompt verification.'' [211] The proposed requirement to make a record of security-based swap trade acknowledgments that are not verified within five business days is not intended to establish a maximum timeframe within which verification should be obtained under proposed Rule 15Fi–1. The five business day threshold is designed to require SBSDs and MSBSPs to make a record of transactions that have gone unverified for a significant length of time.[212] This could indicate a deficiency in the controls established to verify transactions or the existence of a disagreement with the counterparty as to the terms of the transaction.

Records Relating to Business Conduct Standards

The Commission has proposed Rules 15Fh–1 through 15Fh–6 and Rule 15Fk–1 to establish external business conduct requirements for SBSDs and MSBSPs.[213] As currently proposed, the requirements in these rules, would 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 SBSDs;
- Supervisory requirements including written policies and procedures;
- Certain requirements regarding interactions with special entities;
- Provisions intended to prevent SBSDs and independent representatives of special entities from engaging in certain ''pay to play'' activities; and
- Certain minimum requirements relating to chief compliance officers.

To promote compliance with these external business conduct standards, the Commission is proposing amendments to Rule 17a–3 and to include parallel provisions in paragraphs (a) and (b) of proposed Rule 18a–5.[214] First, the Commission is proposing that all types of SBSDs be required to make and keep current a record that demonstrates their compliance with proposed Rule 15Fh–6 (regarding political contributions by certain security-based swap dealers).[215] Second, the Commission is proposing that all types of SBSDs and MSBSPs be required to make and keep current a record that demonstrates their compliance with proposed Rules 15Fh–1 through 15Fh–5 and Rule 15Fk–1, as applicable.[216] These paragraphs would require covered firms to keep supporting documents evidencing their compliance with the business conduct standards; 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 such disclosure or representation.[217]

Request for Comment

The Commission generally requests comment on the proposals to require broker-dealers, SBSDs, and MSBSPs to make and keep current certain types of records. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Are the provisions in Rule 17a–3 that would be included as parallel provisions in paragraph (a) of proposed Rule 18a–5 appropriate for stand-alone SBSDs and stand-alone MSBSPs? If not, explain why not. Are there alternative provisions the Commission should consider? If so, describe them. Are there provisions in Rule 17a–3 that are not being included as parallel provisions in paragraph (a) of proposed Rule 18a–5 that would be appropriate for stand-alone SBSDs and stand-alone MSBSPs? If so, explain why.

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[204] *Id.*

[205] *Id.*

[206] *See* paragraph (a)(27) of Rule 17a–3, as proposed to be amended; paragraphs (a)(14) and (b)(10) of proposed Rule 18a–5.

[207] *See Trade Acknowledgment and Verification of Security-Based Swap Transactions,* 76 FR 3860.

[208] *Id.* at 3861.

[209] *Id.* at 3861–3867.

[210] *See* paragraph (a)(28) of Rule 17a–3, as proposed to be amended; paragraphs (a)(15) and (b)(11) of proposed Rule 18a–5.

[211] *See Trade Acknowledgment and Verification of Security-Based Swap Transactions,* 76 FR 3866.

[212] Proposed Rule 15Fi–1 requires registered entities to verify the terms of security-based swap transactions with the counterparty. However, a party that is not a registered entity is not required to verify a security-based swap transaction. Registered entities must have procedures to verify security-based swap transactions with unregistered entities. *Id.* at 3866–3867.

[213] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Release No. 64766 (June 29, 2011), 76 FR 42396 (July 18, 2011).

[214] *See* paragraphs (a)(29) and (a)(30) of Rule 17a–3, as proposed to be amended; paragraphs (a)(16), (a)(17), (b)(12) and (b)(13) of proposed Rule 18a–5.

[215] *See* paragraph (a)(29) of Rule 17a–3, as proposed to be amended; paragraphs (a)(16) and (b)(12) of proposed Rule 18a–5.

[216] *See* paragraph (a)(30) of Rule 17a–3, as proposed to be amended; paragraphs (a)(17) and (b)(13) of proposed Rule 18a–5. Paragraph (b)(2) of proposed Rule 15Fk–1 would require chief compliance officers of SBSDs and MSBSPs to establish, maintain and review written policies and procedures reasonably designed to achieve compliance with section 15F of the Act and the rules and regulations thereunder, by the SBSDs and MSBSPs.

[217] *See* paragraph (a)(14) of Rule 17a–4, as proposed to be amended; paragraphs (b)(1)(xii) and (b)(2)(vii) of proposed Rule 18a–6.

2. Are the provisions in Rule 17a–3 that would be included as parallel provisions in paragraph (b) of proposed Rule 18a–5 appropriate for bank SBSDs and bank MSBSPs? If not, explain why not. Are there alternative provisions the Commission should consider? If so, describe them. Are there provisions in Rule 17a–3 that are not being included as parallel provisions in paragraph (b) of proposed Rule 18a–5 that would be appropriate for bank SBSDs and bank MSBSPs? If so, explain why.

3. Are the recordkeeping provisions that would be added to paragraph (a) of Rule 17a–3 appropriate for broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs? If not, explain why not. Are there alternative provisions the Commission should consider? If so, describe them.

4. Paragraph (a)(23) of Rule 17a–3, as recently amended, requires certain broker-dealers to make and keep current a record documenting the broker-dealer's credit, market, and liquidity risk management controls.[218] Should an analogous requirement be added to Rule 18a–5? Explain why or why not.

5. Is the five business day time frame for triggering the unverified transaction record requirement an appropriate length of time? Should the time frame be shorter (*e.g.,* three days)? Should the time frame be longer (*e.g.,* seven or ten days)?

6. How do the types of records that would need to be made under Rule 17a–3, as proposed to be amended, and proposed Rule 18a–5 align with the types of records that an FCM or a swap dealer would be required to make? Commenters are asked to identify and explain requirements that they believe would result in a dually registered entity (*e.g.,* a broker-dealer/FCM or an SBSD/swap dealer) needing to make two sets of records that address the same matter or information as opposed to a single record that includes information that would satisfy requirements of both recordkeeping programs.

7. As noted above, certain data elements that would need to be documented under the proposed amendments to Rule 17a–3 or proposed Rule 18a–5 are substantively the same as certain data elements that would need to be reported under proposed Rule 901. Should any additional data elements required to be reported under proposed Rule 901 be required to be recorded in the daily trading records under the proposed amendments to Rule 17a–3 or proposed Rule 18a–5? Are any of the data elements that would be required to be recorded in the daily trading records not appropriate for such records? If so, identify them and explain why. Are there any data elements that should be required to be recorded even though they are not required by proposed Rule 901? If so, identify them and explain why.

8. Can the data elements with respect to security-based swaps that would be required to be recorded in the daily trading records under the proposed amendments to Rule 17a–3 and proposed Rule 18a–5 be stored in, and retrieved from, a single database in order to generate the various types of records that would need to be made (*e.g.,* ledger accounts, securities record, memoranda of brokerage orders, and memoranda of proprietary trades)? If not, explain why not. If so, describe any system changes that would need to be made and identify, estimate, and quantify the burden(s) associated with such system changes.

9. Paragraph (a)(29) of Rule 17a–3, as proposed to be amended, and paragraphs (a)(16) and (b)(12) of proposed Rule 18a–5 require broker-dealer SBSDs, stand-alone SBSDs, and bank SBSDs, respectively, to make and keep a record that demonstrates they complied with the business conduct standards required under proposed Rule 15Fh–6. Should these paragraphs also require these entities to make and keep specified records pertaining to proposed Rule 15Fh–6 to help in evaluating compliance? Explain why or why not. For example, based on the provisions of proposed Rule 15Fh–6, should the following rule text be used in paragraphs (a)(29) and (a)(30) of Rule 17a–3, as proposed to be amended (and in paragraphs (a)(16) and (a)(17), and paragraphs (b)(12) and (b)(13) of proposed Rule 18a–5):

''(29) A record with respect to § 240.15Fh–6 [as proposed at 76 FR 42396, July 18, 2011] containing the following information:

(i) The names, titles, and business and residence addresses of all covered associates of the broker or dealer;

(ii) All municipal entities to which a broker or dealer has provided services in connection with the solicitation or entry into security-based swaps or trading strategies involving security-based swaps in the past five years, but not before six months prior to the effective date of § 240.15Fh–6 [as proposed at 76 FR 42396, July 18, 2011]; and

(iii) In chronological order, all direct or indirect contributions made by the broker or dealer or any of its covered associates (including contributions made up to six months prior to becoming a covered associate) to an official of a municipal entity, or direct or indirect payments to a political party of a state or political subdivision thereof, or to a political action committee, including:

(A) The name and title of each contributor;

(B) The name and title, including the city, county, state, or other political subdivision, of each recipient of a contribution or payment;

(C) Whether the contributor was entitled to vote for the recipient at the time of the contribution;

(D) The amount and date of each contribution and payment; and

(E) Whether any such contribution was the subject of the exception for certain returned contributions pursuant to § 240.15Fh–6(d) or (e) [as proposed at 76 FR 42396, July 18, 2011]; and

(iv) The name and business address of each municipal advisor to whom the broker or dealer provides or agrees to provide, directly or indirectly, payment to solicit a municipal entity for services on its behalf; and, for purposes of this paragraph, the terms *contribution, covered associates, municipal entity, official of municipal entity, payment* and *solicit* will have the same meaning as set forth in § 240.15Fh–6(a) [as proposed at 76 FR 42396, July 18, 2011].

(30) A record that demonstrates the broker or dealer has complied with the business conduct standards as required under § 240.15Fh–1 through § 240.15Fh–6 and § 240.15Fk–1 [as proposed at 76 FR 42396, July 18, 2011].''?

If this rule text should be used, explain why. If this rule text should not be used, explain why not. Is there alternative rule text that should be used? If so, explain why alternative rule text should be used?

b. Additional Proposed Amendments to Rule 17a–3

The Commission is proposing several amendments to Rule 17a–3 to eliminate obsolete text, improve readability, and modernize terminology. 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 is proposing 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.[219] The Commission is

[218] *See Financial Responsibility Rules for Broker-Dealers,* 78 FR 51907.

[219] The proposed amendments would delete the word ''member'' from the title and from the following paragraphs of Rule 17a–3, as proposed to

Continued

proposing a second global change that would replace the word ''shall'' in the rule with the word ''must'' or ''will'' where appropriate.[220] Similarly, when defining terms, the Commission is proposing to replace the phrase ''shall mean'' with the word ''means''.[221] The Commission also proposes to make certain stylistic, corrective, and punctuation amendments to improve the rule's readability.[222]

The Commission is proposing to simplify the text in paragraph (a) of Rule 17a–3 to state that Rule 17a–3 applies to ''every broker or dealer'', since the undesignated introductory paragraph already provides sufficient detail as to the types of registrants to which the rule applies.[223]

In recognition of the fact that broker-dealers may execute orders for non-customers, the Commission is proposing to amend 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.

The Commission is proposing to restructure paragraph (a)(11) of Rule 17a–3 to eliminate paragraphs (a)(11)(i)–(ii).[224] Under these amendments, the text of paragraph (a)(11)(i) of Rule 17a–3 would be set forth in the second sentence of paragraph (a)(11) of Rule 17a–3, as proposed to be amended, and the text of paragraph (a)(11)(ii) would be deleted from the rule.[225]

The Commission is proposing 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 SROs and exchanges with the term ''a self-regulatory organization.'' [226] Thus, rather than naming specific SROs, the paragraph would use the generic term ''a self-regulatory organization.''

The Commission also is proposing amendments to paragraph (b) of Rule 17a–3. Paragraph (b)(1) is designed to avoid duplication and prevent an introducing broker-dealer from having 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 is it references a capital standard that has been superseded. 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 different broker or dealer—remains the same. However, the Commission is proposing to clarify the provision and eliminate the outdated capital standard reference.[227] The Commission also is proposing to delete paragraph (b)(2) as it would be redundant of paragraph (b) of Rule 17a–3, as proposed to be amended.

The Commission is proposing to remove paragraphs (c) and (d) of Rule 17a–3. Paragraph (c) is outdated and 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 antiquated.[228] 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 the issuance thereof. This exemption was adopted in 1953 to reduce the burden and expense of making accounting entries for these rights transactions. The Commission preliminarily believes that the burden associated with these accounting entries is no longer significant in light of the technological advances in recordkeeping systems since 1953.[229] In addition, the Commission preliminarily believes the removal of this exemption would affect a small number of transactions.

As a consequence of the proposed removal of current paragraphs (c) and (d) from Rule 17a–3, current paragraphs (e), (f), (g), and (h) would be redesignated as paragraphs (c), (d), (e), and (f), respectively.

Current paragraph (e) references Municipal Securities Rulemaking Board (''MSRB'') Rule G–8 and states that compliance with such rule will be deemed to be compliance with this section. The proposed amendments would add the phrase ''or any successor rule'' to the reference to Rule G–8 so that the cross-reference does not become superseded over time.

Request for Comment

The Commission generally requests comment on these additional proposed amendments to Rule 17a–3, including comment on whether any of the proposed amendments would result in substantive changes to the requirements applicable to broker-dealers. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Paragraphs (a)(12)(i)(E) through (G) of Rule 17a–3 currently require broker-dealers to retain certain records with

be amended: (a), (a)(3), (a)(5)(i), (a)(6)(i), (a)(7)(i), (a)(8)(i), (a)(9), (a)(10), (a)(11), (a)(12), (a)(17)(i), (a)(18), (a)(19), (a)(20), (a)(22), (b), (e), (f)(2), and (f)(4). *See* Rule 17a–3, as proposed to be amended.

[220] The proposed amendments would replace the word ''shall'' with the word ''must'' or ''will'' in the following paragraphs of Rule 17a–3, as proposed to be amended: (a), (a)(6)(i)(A), (a)(7)(i), (a)(10), (a)(11), (a)(12)(i), (a)(16)(ii), (a)(17)(i), (a)(18)(i), (a)(19)(i), (b), (d), (e), and (f)(4). *See* Rule 17a–3, as proposed to be amended.

[221] The proposed amendments would replace the phrase ''shall mean'' with the word ''means'' in the following paragraphs of Rule 17a–3, as proposed to be amended: (a)(6)(i)(A), (a)(16)(ii)(A), and (a)(16)(ii)(B). *See* Rule 17a–3, as proposed to be amended.

[222] The Commission proposes the following stylistic and corrective changes to Rule 17a–3, as proposed to be 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'' to 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''; and (11) replacing the superfluous ''or'' with a comma in the phrase ''wrongful taking of property or bribery'' in paragraph (a)(12)(i)(G).

[223] *See* undesignated introductory paragraph of Rule 17a–3, as proposed to be amended.

[224] *See* paragraph (a)(11) of Rule 17a–3, as proposed to be amended.

[225] *Id.*

[226] *See* paragraph (a)(12) of Rule 17a–3, as proposed to be amended.

[227] Paragraph (b) of Rule 17a–3, as proposed to be amended, would read as follows: ''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.''

[228] 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.*

[229] *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'').

regard to certain actions taken against their associated persons when they were associated with a broker-dealer. Should these requirements be expanded to include actions taken when they were associated with other types of entities (*e.g.,* SBSDs, MSBSPs, FCMs, investment advisers)? If so, which entities should be covered? Please explain. Also identify, estimate, and quantify any associated burdens with expanding these requirements to include actions taken when broker-dealers are associated with these other types of entities.

2. Do broker-dealers still rely on the exemptions provided in paragraphs (b)(2), (c), and/or (d) of Rule 17a–3? If so, quantify the extent to which these exemptions are relied on, and the burden associated with the Commission's proposal to eliminate these exemptions. In addition, would any system changes be needed if the exemptions provided in paragraphs (b)(2), (c), and/or (d) of Rule 17a–3 were eliminated? If so, identify, estimate, and quantify the burden(s) associated with such system changes.

3. Record Maintenance and Preservation Requirements

As discussed above, Rule 17a–4 requires a broker-dealer to preserve certain types of records if it makes or receives them. The rule also prescribes the period of time 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 proposing amendments to Rule 17a–4 that are designed to account for the security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs.[230] The Commission also is proposing additional largely technical amendments to Rule 17a–4. With respect to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, the Commission is proposing new Rule 18a–6—which is modeled on Rule 17a–4, as proposed to be amended—to establish record maintenance and preservation requirements for these types of registrants.

For the reasons discussed above in sections I. and II.A.1. of this release, proposed Rule 18a–6 does not include a parallel requirement for every requirement in Rule 17a–4.[231] In addition, for the reasons described in section I. of this release, the recordkeeping requirements in proposed Rule 18a–6 applicable to bank SBSDs and bank MSBSPs are more limited in scope than the requirements in the rule applicable to stand-alone SBSDs and stand-alone MSBSPs.

The proposed amendments to Rule 17a–4 and proposed Rule 18a–6 are discussed in more detail below.

a. Amendments to Rule 17a–4 and Proposed Rule 18a–6

Undesignated Introductory Paragraph

Rule 17a–4, as proposed to be amended, would contain an undesignated introductory paragraph explaining that the rule applies to a broker-dealer, including a broker-dealer dually registered with the Commission as an SBSD or MSBSP.[232] The note further explains that an SBSD or MSBSP that is not dually registered as a broker-dealer (*i.e.,* a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP) is subject to the record maintenance and preservation requirements under proposed Rule 18a–6.[233]

Similarly, proposed Rule 18a–6 would contain an undesignated introductory paragraph explaining that the rule applies to an SBSD or MSBSP that is not registered as a broker-dealer.[234] The note further explains that a broker-dealer that is dually registered as an SBSD or MSBSP is subject to the record maintenance and preservation requirements under Rule 17a–4.[235]

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'').[236] Specifically, the six year preservation requirement applies to records required under the following paragraphs of Rule 17a–3, as proposed to be amended: Paragraph (a)(1) (trade blotters); paragraph (a)(2) (general ledgers); paragraph (a)(3) (ledgers of customer and non-customer accounts); paragraph (a)(5) (stock record); paragraph (a)(21) (person who can explain records at each office); paragraph (a)(22) (principal responsible for establishing compliance procedures); and paragraph (d) (security future product records).[237] Consequently, broker-dealer SBSDs and broker-dealer MSBSPs would be required to preserve for six years the same categories of records as broker-dealers not registered as SBSDs or MSBSPs.[238]

As discussed above in section II.A.2.a. of this release, paragraphs (a) and (b) of proposed Rule 18a–5 would contain certain recordkeeping requirements that are parallel to existing requirements in Rule 17a–3. Under these parallel requirements, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would need to make and keep current certain categories of records that broker-dealers must maintain under the six year preservation requirement in Rule 17a–4. Consequently, paragraph (a) of proposed Rule 18a–6 similarly 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.[239] Further, similar to paragraphs (a) and (b) of proposed Rule 18a–5, paragraph (a) of proposed Rule 18a–6 contains one set of six year preservation requirements applicable to stand-alone SBSDs and stand-alone MSBSPs and a separate set applicable to bank SBSDs and bank MSBSPs.[240]

In particular, paragraph (a)(1) of proposed Rule 18a–6 would apply to stand-alone SBSDs and stand-alone MSBSPs.[241] These registrants would be required to preserve for at least six years, the first two years in an easily accessible place, the records required to be made and kept current under the following paragraphs of proposed Rule 18a–5: Paragraph (a)(1) (trade blotters); paragraph (a)(2) (general ledgers); paragraph (a)(3) (ledgers of customer

[230] Broker-Dealer SBSDs and broker-dealer MSBSPs would be subject to all the record maintenance and preservation requirements applicable to broker-dealers under Rule 17a–4, as proposed to be amended, plus the additional requirements specifically applicable only to SBSDs and MSBSPs.

[231] The Commission is not proposing to include in proposed Rule 18a–6 requirements that would parallel the requirements in paragraphs (b)(11), (g), (h), (k), and (l) of Rule 17a–4. These requirements relate to activities that the Commission preliminarily believes would not be relevant to stand-alone SBSDs or stand-alone MSBSPs. Other requirements in Rule 17a–4 that would not be included as parallel requirements in proposed Rule 18a–6 are discussed below.

[232] *See* undesignated introductory paragraph of Rule 17a–4, as proposed to be amended.

[233] *Id.*

[234] *See* undesignated introductory paragraph of proposed Rule 18a–6.

[235] *Id.*

[236] *See* 17 CFR 240.17a–4(a).

[237] *Id.* As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to paragraph (a) of Rule 17a–4.

[238] *See* paragraph (a) of Rule 17a–4, as proposed to be amended.

[239] *See* paragraph (a) of proposed Rule 18a–6.

[240] *Id.*

[241] *See* paragraph (a)(1) of proposed Rule 18a–6 (providing that it applies to SBSDs and MSBSPs subject to paragraph (a) of proposed Rule 18a–5).

and non-customer accounts); and paragraph (a)(4) (stock record).[242] Paragraph (a)(2) of proposed Rule 18a–6 would apply to bank SBSDs and bank MSBSPs.[243] These registrants would be required to preserve for at least six years, the first two years in an easily accessible place, the records required under the following paragraphs of proposed Rule 18a–5: Paragraph (b)(1) (trade blotters); paragraph (b)(2) (ledgers of security-based swap customers and non-customers); and paragraph (b)(3) (stock record).[244]

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

Paragraph (b) 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 current under Rule 17a–3 (the ''three year preservation requirement'').[245] Specifically, paragraph (b)(1) of Rule 17a–4 imposes the three year preservation requirement on the records required to be made and kept current under the following paragraphs of Rule 17a–3, as proposed to be amended: Paragraph (a)(4) (certain ledgers); paragraph (a)(6) (memoranda of brokerage orders); paragraph (a)(7) (memoranda of proprietary orders); paragraph (a)(8) (confirmations); paragraph (a)(9) (accountholder information); paragraph (a)(10) (options positions); paragraph (a)(16) (internal broker-dealer system); paragraph (a)(18) (associated person complaints); paragraph (a)(19) (associated person compensation); paragraph (a)(20) (advertisement and sales literature compliance); and paragraph (e) (records of each broker-dealer office).[246]

The Commission is not proposing to amend or change any of the existing cross-references to Rule 17a–3 in paragraph (b)(1) of Rule 17a–4.[247] The Commission is, however, proposing to add cross-references to certain new paragraphs that would be added to Rule 17a–3 to address security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs. Specifically, paragraph (b)(1) of Rule 17a–4, as proposed to be amended, would apply the three year preservation requirement to the records required under the following paragraphs of Rule 17a–3, as proposed to be amended: Paragraph (a)(24) (liquidity stress test); paragraph (a)(25) (proposed Rule 18a–3 calculations); paragraph (a)(26) (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (a)(27) (proposed Rule 18a–4 reserve account computations); paragraph (a)(28) (unverified transactions); paragraph (a)(29) (political contributions); and paragraph (a)(30) (compliance with external business conduct requirements).[248]

As discussed above in section II.A.2.a. of this release, paragraphs (a) and (b) of proposed Rule 18a–5 would require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to make and keep current certain categories of records that broker-dealers are required to make and keep current under Rule 17a–3 and certain categories of records the Commission is proposing broker-dealers be required to make and keep current under amendments to Rule 17a–3. Under these parallel requirements, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would need to make and keep current certain categories of records that currently are subject to the three year preservation requirement in Rule 17a–4 or, with respect to the new categories of records, are proposed to be subject to the three year preservation requirement. Consequently, paragraph (b) of proposed 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.[249] Further, similar to paragraph (a) of proposed Rule 18a–6, paragraph (b) would contain two sets of provisions.[250]

Paragraph (b)(1)(i) of proposed Rule 18a–6 would apply to stand-alone SBSDs and stand-alone MSBSPs.[251] These registrants would be required to preserve for a period of not less than three years, the first two years in an easily accessible place, the records required to be made and kept current under the following paragraphs of proposed Rule 18a–5, as applicable: 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 or tangible net worth); paragraph (a)(11) (liquidity stress test); paragraph (a)(12) (proposed Rule 18a–3 calculations); paragraph (a)(13) (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (a)(14) (proposed Rule 18a–4 reserve account computations); paragraph (a)(15) (unverified transactions); paragraph (a)(16) (political contributions); and paragraph (a)(17) (compliance with external business conduct requirements).[252]

Paragraph (b)(2) of proposed Rule 18a–6 would apply to bank SBSDs and bank MSBSPs.[253] These registrants would be required to preserve for a period of not less than three years, the first two years in an easily accessible place, the records required to be made and kept current under the following paragraphs of proposed Rule 18a–5, as applicable: Paragraph (b)(4) (memoranda of brokerage orders); paragraph (b)(5) (memoranda of proprietary orders); paragraph (b)(6) (confirmations); paragraph (b)(7) (accountholder information); paragraph (b)(9) (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (b)(10) (proposed Rule 18a–4 reserve account computations); paragraph (b)(11) (unverified transactions); paragraph (b)(12) (political contributions); and paragraph (b)(13) (compliance with external business conduct requirements).[254]

Three Year Preservation Requirement for Certain Other Records

Paragraph (b) of Rule 17a–4 also provides 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.[255] These are not categories of records a broker-dealer is required to make and keep

[242] *See* paragraph (a)(1) of proposed Rule 18a–6.

[243] *See* paragraph (a)(2) of proposed Rule 18a–6 (providing that it applies to SBSDs and MSBSPs subject to paragraph (b) of proposed Rule 18a–5).

[244] *See* paragraph (a)(2) of proposed Rule 18a–6.

[245] *See* 17 CFR 240.17a–4(b).

[246] *Id.* Currently, Rule 17a–4 does not cross-reference paragraph (a)(11) of Rule 17a–3 (trial balances and computation of net capital). *See* 17 CFR 240.17a–3(a)(11); 17 CFR 240.17a–4. The Commission is proposing to correct this omission by adding a cross reference to paragraph (a)(11) of Rule 17a–3 in paragraph (b)(1) of Rule 17a–4, as proposed to be amended. This would require 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 proposed requirement.

[247] *See* paragraph (b)(1) of Rule 17a–4, as proposed to be amended.

[248] *Id.*

[249] *See* paragraph (b) of proposed Rule 18a–6.

[250] *Id.*

[251] *See* paragraph (b)(1)(i) of proposed Rule 18a–6 (providing that it applies to SBSDs and MSBSPs subject to paragraph (a) of proposed Rule 18a–5).

[252] *See* paragraph (b)(1)(i) of proposed Rule 18a–6.

[253] *See* paragraph (b)(2) of proposed Rule 18a–6 (providing that it applies to SBSDs and MSBSPs subject to paragraph (b) of proposed Rule 18a–5).

[254] *See* paragraph (b)(2)(i) of proposed Rule 18a–6.

[255] *See* 17 CFR 240.17a–4(b)(2) through (12).

current under Rule 17a–3 but rather types of records that a broker-dealer may make or receive in the ordinary course of business.[256]

As discussed in detail below, the Commission is proposing amendments to these provisions in paragraph (b) of Rule 17a–4 to account for security-based swaps, and is proposing amendments requiring that broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, preserve certain additional records related to security-based swap activities. Further, the Commission is proposing in paragraph (b) of proposed Rule 18a–6 that stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs be required to preserve similar records.

In addition, paragraphs (b)(3), (b)(4), (b)(5), and (b)(7) of Rule 17a–4 require the preservation of certain types of records if they relate to the broker-dealer's *business as such* (*i.e.,* as a broker-dealer).[257] Security-based swap activities of a broker-dealer that is not registered as an SBSD or MSBSP would be 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 SBSD or broker-dealer MSBSP, the Commission is proposing to amend paragraph (m) of Rule 17a–4 to make clear that the *business as such* of a broker-dealer dually registered as an SBSD or MSBSP would include the firm's business as an SBSD or MSBSP.[258]

The following is a discussion of the proposed amendments to Rule 17a–4 with respect to certain other records that would be subject to the three year preservation requirement and parallel provisions that would be included in proposed Rule 18a–6.

Bank Records. Paragraph (b)(2) of Rule 17a–4 requires broker-dealers to preserve all check books, bank statements, cancelled checks, and cash reconciliations.[259] The Commission is not proposing to amend paragraph (b)(2) of Rule 17a–4 to specifically account for security-based swaps. However, the Commission is proposing to include a parallel requirement in paragraph (b)(1) of Rule 18a–6 that would mirror paragraph (b)(2) of Rule 17a–4.[260] In particular, paragraph (b)(1)(ii) would require stand-alone SBSDs and stand-alone MSBSPs to preserve these types of bank records.[261]

Bills. Paragraph (b)(3) of Rule 17a–4 requires broker-dealers, which would include broker-dealer SBSDs and broker-dealer MSBSPs, to preserve all bills receivable or payable, paid or unpaid, relating to the business of the member, broker, or dealer.[262] The Commission is proposing to include a parallel requirement in paragraph (b)(1) of proposed Rule 18a–6 that would mirror paragraph (b)(3) of Rule 17a–4.[263] In particular, paragraph (b)(1)(iii) of proposed Rule 18a–6 would require stand-alone SBSDs and stand-alone MSBSPs to preserve these types of bills.[264]

Communications. Paragraph (b)(4) of Rule 17a–4 requires broker-dealers 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 rules of an SRO of which the broker-dealer is a member regarding communications with the public.[265] The Commission is proposing amendments to paragraph (b)(4) to account for security-based swap activities and to include parallel requirements in paragraphs (b)(1) and (b)(2) of proposed Rule 18a–6 that are modeled on paragraph (b)(4) of Rule 17a–4, as proposed to be amended.[266]

The proposed amendments to paragraph (b)(4) of Rule 17a–4 also would implement section 15F(g)(1) of the Exchange Act.[267] Section 15F(g)(1) provides that each registered SBSD and MSBSP shall maintain daily trading records of the security-based swaps of the registered SBSD and 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.[268] The term *communications,* as used in paragraph (b)(4) of Rule 17a–4, includes all electronic communications (*e.g.,* emails and instant messages).[269] Moreover, communications related to daily trading of security-based swaps would be communications relating to the *business as such* of a broker-dealer, including a broker-dealer SBSD and broker-dealer MSBSP. Consequently, the Commission need not amend paragraph (b)(4) of Rule 17a–4 to establish a retention period applicable to broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, with respect to electronic mail and instant messages relating to their trading in security-based swaps.

However, the Commission has not previously interpreted the term *communications* to include telephonic communications. Therefore, to implement section 15F(g)(1) of the Exchange Act, the Commission is proposing to amend the preservation requirement in paragraph (b)(4) of Rule 17a–4 to include ''recordings of telephone calls required to be maintained pursuant to section 15F(g)(1) of the Exchange Act.'' [270] Under this proposed requirement, a broker-dealer SBSD or a broker-dealer MSBSP would be required to preserve for three years telephone calls that it chooses to record to the extent the calls are required to be maintained pursuant to section 15F(g)(1) of the Exchange Act.[271]

The Commission is proposing to include parallel communication preservation requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs modeled on paragraph (b)(4) of Rule 17a–4, as

[256] *Id.*

[257] *See* 17 CFR 240.17a–4(b)(3) through (5) and (b)(7).

[258] *See* paragraph (m)(5) of Rule 17a–4, as proposed to be amended.

[259] *See* 17 CFR 240.17a–4(b)(2).

[260] *Compare* paragraph (b)(1)(ii) of proposed Rule 18a–6, *with* 17 CFR 240.17a–4(b)(2).

[261] *See* paragraph (b)(1)(ii) of proposed Rule 18a–6.

[262] *See* 17 CFR 240.17a–4(b)(3).

[263] *Compare* paragraph (b)(1)(iii) of proposed Rule 18a–6, *with* 17 CFR 240.17a–4(b)(3).

[264] *See* paragraph (b)(1)(iii) of proposed Rule 18a–6.

[265] *See* 17 CFR 240.17a–4(b)(4). Paragraph (b)(4) of Rule 17a–4 further provides the term *communications* as used in the paragraph includes sales scripts. *Id.*

[266] *Compare* paragraphs (b)(1)(iv) and (b)(2)(ii) of proposed Rule 18a–6, *with* paragraph (b)(4) of Rule 17a–4, as proposed to be amended.

[267] *See* 15 U.S.C. 78o–10(g)(1).

[268] *Id.*

[269] *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 (''Broker-dealers also are subject to recordkeeping requirements that would be applicable to all electronic communications received and sent by the firm relating to its business''); *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,* 66 FR 55818, 55825 (''Paragraph (b)(4) of Rule 17a–4 previously required that each broker-dealer keep originals of all communications received and copies of all communications sent by the firm relating to its business as a broker-dealer, including inter-office memoranda and communications. With respect to memoranda, including email messages, the Commission has stated that the content and audience of the message determine whether a copy must be preserved, regardless of whether the message was sent on paper or sent electronically'').

[270] *See* paragraph (b)(4) of Rule 17a–4, as proposed to be amended.

[271] *See* 15 U.S.C. 78o–10(g)(1).

proposed to be amended.[272] The provision applicable to bank SBSDs and bank MSBSPs would limit the requirement to communications that relate to the business of an SBSD or MSBSP.[273]

Trial balances. Paragraph (b)(5) of Rule 17a–4 requires broker-dealers, which would include broker-dealer SBSDs and broker-dealer MSBSPs, 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.[274] The Commission is proposing to include a parallel requirement in paragraph (b)(1) of proposed Rule 18a–6 applicable to stand-alone SBSDs and stand-alone MSBSPs that is modeled on paragraph (b)(5) of Rule 17a–4.[275] In particular, paragraph (b)(1)(v) of proposed Rule 18a–6 would require stand-alone SBSDs and stand-alone MSBSPs to preserve similar types of records.[276] In contrast to paragraph (b)(5) of Rule 17a–4, the provision would not refer to computations of ''aggregate indebtedness'' because this type of computation would not be part of the capital rule for stand-alone SBSDs or stand-alone MSBSPs.[277] Further, to account for the proposed capital standard for stand-alone MSBSPs, the paragraph would refer to tangible net worth.[278]

Account Documents. Paragraph (b)(6) of Rule 17a–4 requires broker-dealers, which would include broker-dealer SBSDs and broker-dealer MSBSPs, 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, and copies of resolutions empowering an agent to act on behalf of a corporation.[279] The Commission is proposing to include parallel requirements in paragraphs (b)(1) and (b)(2) of proposed Rule 18a–6 modeled on paragraph (b)(6) of Rule 17a–4.[280] In particular, paragraphs (b)(1)(vi) and (b)(2)(iii) of proposed Rule 18a–6 would require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, respectively, to preserve similar types of records, but only with respect to security-based swap accounts.[281] For example, under the proposal, bank SBSDs and bank MSBSPs would not be required to maintain these records with respect to accounts involving exclusively banking related services.

Written Agreements. Paragraph (b)(7) of Rule 17a–4 requires a broker-dealer to preserve all written agreements (or copies thereof) entered into by such broker-dealer relating to its business as such, including agreements with respect to any account.[282] The Commission is proposing amendments to paragraph (b)(7) of Rule 17a–4 to account for security-based swaps and to include parallel requirements in paragraphs (b)(1) and (b)(2) of proposed Rule 18a–6 modeled on paragraph (b)(7) of Rule 17a–4, as proposed to be amended.[283] The amendments to paragraph (b)(7) of Rule 17a–4 would establish a preservation requirement that 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 such person's securities-based swaps, must be maintained with such person's account records.[284] This provision is designed to facilitate the examination of the broker-dealer by requiring it to maintain these records together.

The parallel requirements in proposed Rule 18a–6 would require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to preserve similar types of records and include the same preservation requirement.[285] The provision applicable to bank SBSDs and bank MSBSPs would limit the preservation requirement to written agreements relating to the registrant's business as an SBSD or MSBSP.[286]

Information Supporting Financial Reports. Paragraph (b)(8) of Rule 17a–4 requires a broker-dealer 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 Rule 17a–12, as applicable.[287] The paragraph specifically identifies the types of supporting information that needs to be preserved, including money balances, securities positions, futures positions, commodity positions, and options positions, among other things.[288] The Commission is proposing amendments to paragraph (b)(8) of Rule 17a–4 to account for swap and security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, and to include parallel requirements applicable to stand-alone SBSDs and stand-alone MSBSPs in paragraph (b)(1) of proposed Rule 18a–6 modeled on paragraph (b)(8) of Rule 17a–4, as proposed to be amended.[289]

The amendments to paragraph (b)(8) of Rule 17a–4 would add a reference to proposed Form SBS in the introductory text after references to certain parts of the FOCUS Report.[290] Thus, broker-dealer SBSDs and broker-dealer MSBSPs—which would file proposed Form SBS rather than the FOCUS Report—would need to preserve information in support of proposed Form SBS. Further, the amendments to paragraph (b)(8) of Rule 17a–4 would add the phrase ''or swaps'' after the phrase ''commodity contracts'' and the phrase ''and swap'' after the term ''commodity'' wherever they appear in the paragraph.[291] This would require broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to preserve the same type of supporting information with respect to swap

[272] *Compare* paragraphs (b)(1)(iv) and (b)(2)(ii) of proposed Rule 18a–6, *with* paragraph (b)(4) of Rule 17a–4, as proposed to be amended.

[273] *See* paragraph (b)(2)(ii) of proposed Rule 18a–6.

[274] *See* 17 CFR 240.17a–4(b)(5). As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to paragraph (b)(5) of proposed Rule 18a–6.

[275] *Compare* paragraph (b)(1)(v) of proposed Rule 18a–6, *with* 17 CFR 240.17a–4(b)(5).

[276] *See* paragraph (b)(1)(v) of proposed Rule 18a–6.

[277] *See* paragraph (b)(1)(v) of proposed Rule 18a–6. *See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70217–70256.

[278] *See* paragraph (b)(1)(v) of proposed Rule 18a–6. *See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257 (proposing a tangible net worth capital standard for nonbank MSBSPs). A broker-dealer MSBSP would be subject to the net capital requirements in Rule 15c3–1.

[279] *See* 17 CFR 240.17a–4(b)(6).

[280] *Compare* paragraphs (b)(1)(vi) and (b)(2)(iii) of proposed Rule 18a–6, *with* 17 CFR 240.17a–4(b)(6).

[281] *See* paragraphs (b)(1)(vi) and (b)(2)(iii) of proposed Rule 18a–6.

[282] *See* 17 CFR 240.17a–4(b)(7).

[283] *Compare* paragraphs (b)(1)(vii) and (b)(2)(iv) of proposed Rule 18a–6, *with* paragraph (b)(7) of Rule 17a–4, as proposed to be amended.

[284] *See* paragraph (b)(7) of Rule 17a–4, as proposed to be amended.

[285] *See* paragraphs (b)(1)(vii) and (b)(2)(iv) of proposed Rule 18a–6.

[286] *See* paragraph (b)(2)(iv) of proposed Rule 18a–6.

[287] *See* 17 CFR 240.17a–4(b)(8); 17 CFR 240.17a–5; 17 CFR 240.17a–12. Rule 17a–12 prescribes reporting requirements for OTC derivatives dealers that are similar to the reporting requirements in Rule 17a–5 applicable to broker-dealers. *Compare* 17 CFR 240.17a–12, *with* 17 CFR 240.17a–5.

[288] *See* 17 CFR 240.17a–4(b)(8)(i) through (xv).

[289] *Compare* paragraph (b)(1)(viii) of proposed Rule 18a–6, *with* paragraph (b)(8) of Rule 17a–4, as proposed to be amended.

[290] *See* paragraph (b)(8) of Rule 17a–4, as proposed to be amended.

[291] *See* paragraphs (b)(8)(v) through (viii) of Rule 17a–4, as proposed to be amended.

positions as is required with respect to commodity positions.

Paragraph (b)(8)(xiii) of Rule 17a–4 requires broker-dealers to preserve records containing detail relating to information for possession or control requirements under Rule 15c3–3 and reported on a schedule to certain parts of the FOCUS Report.[292] As noted above in section II.A.2.a. of this release, Rule 15c3–3 requires a carrying broker-dealer to maintain physical possession or control over customers' fully paid and excess margin securities.[293] The Commission has proposed a parallel requirement in proposed Rule 18a–4 that would apply to SBSDs with respect to their security-based swap customers.[294] Moreover, as discussed below in section II.B.2.b. of this release, the Commission is proposing that SBSDs report information relating to possession or control requirements in proposed Form SBS. Consequently, the Commission is proposing to amend paragraph (b)(8) of Rule 17a–4 by adding a new paragraph that is modeled on paragraph (b)(8)(xiii) of Rule 17a–4 but that relates to the possession or control requirements in proposed Rule 18a–4 instead of the possession or control requirements in Rule 15c3–3.[295] Thus, broker-dealer SBSDs would be required to preserve records that contain detail relating to information for possession or control requirements under Rule 18a–4 and reported on proposed Form SBS.

Finally, the Commission's proposed capital requirements for nonbank SBSDs would require these registrants to maintain minimum net capital of not less than the greater of a fixed-dollar amount or a ratio amount.[296] The ratio amount for a broker-dealer SBSD would be the sum of the current ratio amount prescribed in Rule 15c3–1 and an amount equal to 8% of the firm's *risk margin amount* (''8% margin factor'').[297] The ratio amount for a stand-alone SBSD would be an amount equal to the 8% margin factor.[298] The term *risk margin amount* would be defined as the sum of: (1) The greater of the total margin required to be delivered by the nonbank SBSD with respect to security-based swap transactions cleared for security-based swap customers at a clearing agency or the amount of the deductions that would apply to the cleared security-based swap positions of the security-based swap customers pursuant to paragraph (c)(1)(vi) of Rule 18a–1; and (2) the total margin amount calculated by the stand-alone SBSD with respect to non-cleared security-based swaps pursuant to proposed new Rule 18a–3.[299] Accordingly, to determine its minimum net capital requirement, a nonbank SBSD would need to calculate the amount equal to the 8% margin factor.[300] The Commission is proposing to amend paragraph (b)(8) of Rule 17a–4 by adding a new paragraph that would require a broker-dealer SBSD to preserve records that contain detail relating to the calculation of the risk margin amount.[301]

As indicated above, the Commission is proposing to include a parallel requirement in paragraph (b)(1) of proposed Rule 18a–6, which is modeled on paragraph (b)(8) of Rule 17a–4, as proposed to be amended.[302] Thus,

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[292] *See* 17 CFR 240.17a–4(b)(8)(xiii).

[293] *See* 17 CFR 240.15c3–3.

[294] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70278–70282.

[295] *Compare* paragraph (b)(8)(xiii) of Rule 17a–4, as proposed to be amended, *with* 17 CFR 240.17a–4(b)(8)(xiii).

[296] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70221–70229. The fixed-dollar amount applicable to nonbank SBSDs, other than ANC broker-dealer SBSDs, would be $20 million. The fixed dollar amount applicable to ANC broker-dealer SBSDs would be $1 billion. *Id.* In addition, stand-alone ANC SBSDs would be subject to a $100 million minimum tentative net capital requirement and ANC broker-dealer SBSDs would be subject to a $5 billion minimum tentative net capital requirement. *Id.*

[297] *Id.* Rule 15c3–1 prescribes two financial ratio requirements. *See* 17 CFR 240.15c3–1(a)(1). The first financial ratio requirement provides that a broker-dealer must not permit its aggregate indebtedness to all other persons to exceed 1500% of its net capital (*i.e.,* a 15-to-1 aggregate indebtedness to net capital requirement). *See* 17 CFR 240.15c3–1(a)(1)(i). Stated another way, the broker-dealer must maintain, at a minimum, an amount of net capital equal to 1/15th (or 6.67%) of its aggregate indebtedness. This financial ratio generally is used by smaller broker-dealers that do not hold customer securities and cash and is the default financial ratio requirement that all broker-dealers must apply unless they affirmatively elect to be subject to the second financial ratio requirement by notifying their designated examining authority (''DEA'') of the election. *See* 17 CFR 240.15c3–1(a)(1)(i) and (ii). The second financial ratio requirement provides that a broker-dealer must not permit its net capital to be less than 2% of aggregate debit items (*i.e.,* customer-related obligations to the broker-dealer). *See* 17 CFR 240.15c3–1(a)(1)(ii). Customer debit items—computed pursuant to Rule 15c3–3—consist of, among other things, margin loans to customers and securities borrowed by the broker-dealer to effectuate deliveries of securities sold short by customers. *See* 17 CFR 240.15c3–3; 17 CFR 240.15c3–3a. This ratio generally is used by larger broker-dealers that hold customer securities and funds.

[298] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70221–70229. Neither the 15-to-1 aggregate indebtedness to net capital ratio nor the 2% of aggregate debit items ratio would be applicable to stand-alone SBSDs. *Id.*

[299] *Id.* at 70223.

[300] *Id.* at 70221–70229.

[301] *See* paragraph (b)(8)(xvi) of Rule 17a–4, as proposed to be amended.

[302] *Compare* paragraph (b)(1)(viii) of proposed Rule 18a–6, *with* paragraph (b)(8) of Rule 17a–4, as proposed to be amended. More specifically: (1) Paragraph (b)(1)(viii)(A) of proposed Rule 18a–6 would be modeled on paragraph (b)(8)(i) of Rule 17a–4, as proposed to be amended, except the former would refer to *security-based swap customers* rather than *customers* and not contain a reference to *cash* accounts; (2) paragraph (b)(1)(viii)(B) of proposed Rule 18a–6 would be modeled on paragraph (b)(8)(ii) of Rule 17a–4, as proposed to be amended, except the former would refer to *security-based swap non-customers* instead of *non-customers* and to *security-based swap accounts* instead of *securities accounts,* and not contain a reference to *cash* accounts; (3) paragraph (b)(1)(viii)(C) of proposed Rule 18a–6 would mirror paragraph (b)(8)(iii) of Rule 17a–4, as proposed to be amended; (4) paragraph (b)(1)(viii)(D) of proposed Rule 18a–6 would mirror paragraph (b)(8)(v) of Rule 17a–4, as proposed to be amended; (5) paragraph (b)(1)(viii)(E) of proposed Rule 18a–6 would mirror paragraph (b)(8)(vi) of Rule 17a–4, as proposed to be amended; (6) paragraph (b)(1)(viii)(F) of proposed Rule 18a–6 would mirror paragraph (b)(8)(vii) of Rule 17a–4, as proposed to be amended; (7) paragraph (b)(1)(viii)(G) of proposed Rule 18a–6 would mirror paragraph (b)(8)(viii) of Rule 17a–4, as proposed to be amended; (8) paragraph (b)(1)(viii)(H) of proposed Rule 18a–6 would mirror paragraph (b)(8)(ix) of Rule 17a–4, as proposed to be amended; (9) paragraph (b)(1)(viii)(I) of proposed Rule 18a–6 would mirror paragraph (b)(8)(x) of Rule 17a–4, as proposed to be amended; (10) paragraph (b)(1)(viii)(J) of proposed Rule 18a–6 would mirror paragraph (b)(8)(xi) of Rule 17a–4, as proposed to be amended; (11) paragraph (b)(1)(viii)(K) of proposed Rule 18a–6 would be modeled on paragraph (b)(8)(xii) of Rule 17a–4, as proposed to be amended, except the former would refer to proposed Rule 18a–1 (the proposed capital rule for stand-alone SBSDs) rather than Rule 15c3–1 (the broker-dealer capital rule); (12) paragraph (b)(1)(viii)(L) of proposed Rule 18a–6 would mirror paragraph (b)(8)(xiv) of Rule 17a–4, as proposed to be amended; (13) paragraph (b)(1)(viii)(M) of proposed Rule 18a–6 would be modeled on paragraph (b)(8)(xv) of Rule 17a–4, as proposed to be amended, except the former would refer to proposed Rule 18a–1 and proposed Rule 18a–2 (the proposed tangible net worth rule for nonbank MSBSPs) rather than Rule 15c3–1; (14) paragraph (b)(1)(viii)(N) of proposed Rule 18a–6 would be modeled on paragraph (b)(8)(xvi) of Rule 17a–4, as proposed to be amended, except the former would refer to proposed Rule 18a–1 rather than Rule 15c3–1; and (15) paragraph (b)(1)(viii)(O) of proposed Rule 18a–6 would be modeled on paragraph (b)(8)(xvii) of Rule 17a–4, as proposed to be amended, except the former would refer to proposed Rule 18a–7 (the proposed reporting rule for nonbank SBSDs and nonbank MSBSPs) rather than Rule 17a–5 (the broker-dealer reporting rule) and Rule 17a–12 (the OTC derivatives dealer reporting rule). The Commission is not proposing to include in paragraph (b)(1)(viii) of proposed Rule 18a–6 provisions that would be analogous to paragraphs (b)(8)(iv) and (b)(8)(xiii) of Rule 17a–4, as proposed to be amended. Paragraph (b)(8)(iv) relates to a provision in Rule 15c3–1 for which there is not a parallel provision in proposed Rule 18a–1. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR

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stand-alone SBSDs and stand-alone MSBSPs would be required to preserve similar types of records, as applicable, containing information supporting their financial reports.[303]

The Commission is proposing a preservation requirement for bank SBSDs that would require these registrants to preserve the same types of records related to Rule 18a–4 that broker-dealer SBSDs would need to preserve under paragraph (b)(8)(xiv) of Rule 17a–4, as proposed to be amended, and that stand-alone SBSDs would be required to preserve under paragraph (b)(1)(viii)(L) of proposed Rule 18a–6.[304] Specifically, bank SBSDs would be required to preserve records containing detail relating to information for possession or control requirements under proposed Rule 18a–4 and reported on proposed Form SBS that is in support of amounts included in the report prepared as of the audit date on proposed Form SBS and in annual audited financial statements required by proposed Rule 18a–7.[305]

Rule 15c3–4 Risk Management Records. OTC derivatives dealers and ANC broker-dealers are required to comply with Rule 15c3–4.[306] This rule requires these types of 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 market, credit, leverage, liquidity, legal, and operational risks.[307] The rule also requires periodic reviews (which may be performed by internal audit staff) and annual reviews (which must be conducted by independent certified public accountants) of the firm's risk management systems.[308] Paragraph (b)(10) of Rule 17a–4 requires broker-dealers subject to Rule 15c3–4 (*i.e.,* OTC derivatives dealers and ANC broker-dealers) 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.[309] The Commission has proposed that nonbank SBSDs and nonbank MSBSPs be required to comply with Rule 15c3–4.[310] Consequently, nonbank SBSDs and nonbank MSBSPs should be required to preserve the same types of records relating to Rule 15c3–4 as ANC broker-dealers and OTC derivatives dealers.[311]

Paragraph (b)(10) of Rule 17a–4 applies the preservation requirements for records relating to Rule 15c3–4 to broker-dealers, which includes broker-dealer SBSDs and broker-dealer MSBSPs.[312] The Commission is proposing to include a parallel requirement in paragraph (b)(1) of proposed Rule 18a–6 applicable to stand-alone SBSDs and stand-alone MSBSPs that would mirror paragraph (b)(10) of Rule 17a–4.[313] In particular, paragraph (b)(1)(ix) of proposed Rule 18a–6 would require stand-alone SBSDs and stand-alone MSBSPs to preserve the records required to made under Rule 15c3–4 and the results of the periodic reviews required to be conducted under the rule.[314] The Commission did not propose that bank SBSDs and bank MSBSPs comply with Rule 15c3–4.[315] Consequently, the Commission is not proposing a parallel record preservation requirement for these registrants.

Credit Risk Determinations. Under Appendix E to Rule 15c3–1, ANC broker-dealers are permitted to add back to net worth uncollateralized receivables from counterparties arising from OTC derivatives transactions when computing net capital.[316] Instead of the 100% deduction that applies to most unsecured receivables under Rule 15c3–1, ANC broker-dealers are permitted to take a credit risk charge based on the uncollateralized credit exposure to the counterparty.[317] In most cases, the credit risk charge is significantly less than a 100% deduction, since it is a percentage of the amount of the receivable that otherwise would be deducted in full. The Commission has proposed that this treatment be narrowed under proposed amendments to the capital requirements for ANC broker-dealers so that it would apply only to uncollateralized receivables from commercial end users arising from security-based swaps (*i.e.,* uncollateralized receivables from other types of counterparties would be subject to the 100% deduction from net worth).[318] In addition, the proposed capital requirements for nonbank SBSDs permitted to use internal models to calculate market and credit risk charges when computing net capital (*i.e.,* ANC broker-dealer SBSDs and stand-alone ANC SBSDs) similarly would allow these registrants to take credit risk charges with respect to uncollateralized receivables but only from commercial end users arising from security-based swaps.[319]

The method for computing the credit risk charge is set forth in Appendix E of Rule 15c3–1.[320] Among other things, the amount of the credit risk charge is based on the creditworthiness of the counterparty.[321] Paragraphs (c)(4)(vi)(D) and (E) of Appendix E of Rule 15c3–1 require ANC broker-dealers to make and keep current records relating to the bases of their internal credit assessments of counterparties for purposes of the credit risk charge.[322] The Commission has proposed a parallel requirement for stand-alone ANC SBSDs.[323] Paragraph (b)(12) of

70255–70256. Paragraph (b)(8)(xiii) relates to Rule 15c3–3, which does not apply to stand-alone SBSDs or stand-alone MSBSPs. *Id.* at 70274–70288.

[303] *See* paragraphs (b)(1)(vii) and (b)(2)(iv) of proposed Rule 18a–6.

[304] *Compare* paragraph (b)(2)(v) of proposed Rule 18a–6, *with* paragraph (b)(8)(xiv) of Rule 17a–4, as proposed to be amended, and paragraph (b)(1)(viii)(L) of proposed Rule 18a–6.

[305] *See* paragraph (b)(2)(v) of proposed Rule 18a–6.

[306] *See* 17 CFR 240.15c3–4. *See also OTC Derivatives Dealers,* 63 FR 59362; *Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities,* and Exchange Act Release No. 49830 (June 8, 2004), 69 FR 34428 (June 21, 2004).

[307] *See* 17 CFR 240.15c3–4.

[308] *See* 17 CFR 240.15c3–4(c)(3). The annual review must be conducted in accordance with procedures agreed to by the firm and the independent public accountant conducting the review.

[309] *See* 17 CFR 240.17a–4(b)(10).

[310] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70250–70251.

[311] *See* paragraph (b)(1)(ix) of proposed Rule 18a–6.

[312] *See* 17 CFR 240.17a–4(b)(10).

[313] *Compare* 17 CFR 240.17a–4(b)(10), *with* paragraph (b)(1)(ix) of proposed Rule 18a–6.

[314] *See* paragraph (b)(1)(ix) of proposed Rule 18a–6.

[315] *See* 15 U.S.C. 78o–10(d)(2)(A) (providing that the Commission may not prescribe rules imposing prudential requirements on SBSDs and MSBSPs for which there is a prudential regulator).

[316] *See* 17 CFR 240.15c3–1e(c). OTC derivatives dealers are permitted to treat such uncollateralized receivables in a similar manner. *See* 17 CFR 240.15c3–1f.

[317] *See* 17 CFR 240.15c3–1(a)(7); 17 CFR 240.15c3–1e(c).

[318] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70240–70245.

[319] *See id.*

[320] *See* 17 CFR 240.15c3–1e(c).

[321] *See id.* Consistent with section 939A of the Dodd-Frank Act, the Commission recently adopted amendments eliminating the use of credit ratings of nationally recognized statistical rating organizations for the purposes of determining the credit risk charges under Appendix E. *See* Public Law 111–203, 939A; *Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934,* Exchange Act Release No. 71194 (Dec. 27, 2013), 79 FR 1522 (Jan. 8, 2014). Consequently, an ANC broker-dealer must use internal credit assessments to determine the credit risk charges (as would an ANC broker-dealer SBSD). *See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70240–70245 (proposing that stand-alone ANC SBSDs must use internal credit assessments for purposes of determining credit risk changes).

[322] *See* 17 CFR 240.15c3–1e(c)(4)(vi)(D) and (E).

[323] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and*

Rule 17a–4 requires ANC broker-dealers—and would require ANC broker-dealer SBSDs—to preserve the records required under paragraphs (c)(4)(vi)(D) and (E) of Appendix E of Rule 15c3–1 in accordance with Rule 17a–4.[324] The Commission is proposing to include a parallel requirement in paragraph (b)(1) of proposed Rule 18a–6 applicable to stand-alone ANC SBSDs that is modeled on paragraph (b)(12) of Rule 17a–4.[325] Consequently, stand-alone ANC SBSDs would be required to preserve the same types of records required to be made under proposed Rule 18a–1.

Regulation SBSR. Section 13A(a)(1) of the Exchange Act provides that all security-based swaps that are not accepted for clearing shall be subject to regulatory reporting.[326] Section 13(m)(1)(G) of the Exchange Act [327] provides that each security-based swap (whether cleared or uncleared) shall be reported to a registered swap data repository, and section 13(m)(1)(C) of the Exchange Act [328] generally provides that transaction, volume, and pricing data of all security-based swaps shall be publicly disseminated in real time, except in the case of block trades.[329] On November 19, 2010, the Commission proposed Regulation SBSR to implement these requirements.[330] On May 1, 2013, the Commission re-proposed Regulation SBSR as part of its release on cross-border security-based swap activities.[331]

Re-proposed Regulation SBSR would assign to one side of a security-based swap transaction the duty to report the transaction to a registered swap data repository.[332] Although any type of counterparty could in theory become a reporting side, re-proposed Regulation SBSR includes a reporting hierarchy that would assign the duty primarily to SBSDs and MSBSPs. In addition, re-proposed Regulation SBSR would require SBSDs and MSBSPs to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that such entities comply with any security-based swap transaction reporting obligations.[333]

The Commission is proposing to amend paragraph (b) of Rule 17a–4 to add a requirement that broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, preserve the information they are required to submit to a registered swap data repository under Regulation SBSR.[334] In addition, the Commission is proposing to include parallel requirements in paragraphs (b)(1) and (b)(2) of proposed Rule 18a–6.[335] Consequently, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be required to preserve the same types of records.[336]

Records Relating to Business Conduct Standards. As discussed above in section II.A.2.a. of this release, the Commission has proposed Rules 15Fh–1 through 15Fh–6 and Rule 15Fk–1.[337] These rules, among other things, would require SBSDs and MSBSPs to make certain disclosures, provide certain notices, and make other records.[338] The Commission is proposing to amend paragraph (b) of Rule 17a–4 to add a requirement that broker-dealer SBSDs and broker-dealer MSBSPs preserve copies of documents, communications, and notices related to business conduct standards as required under Rules 15Fh–1 through 15Fh–6 and Rule 15Fk–1.[339] In addition, the Commission is proposing to include parallel requirements in paragraphs (b)(1) and (b)(2) of proposed Rule 18a–6.[340] Consequently, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be required to preserve the same types of records.[341]

Section 15F(h)(4)(C) of the Exchange Act imposes duties on SBSDs that act as advisors to special entities.[342] Proposed Rule 15Fh–2(a) would provide an exclusion to the definition of acting as an advisor to a special entity.[343] To fall within the exclusion, the SBSD would be required to obtain a written representation from the special entity that it will not rely on recommendations provided by the SBSD, and that the special entity will rely on advice from a qualified independent representative (as defined in proposed Rule 15F–5(a)).[344] The SBSD also would be required to have a reasonable basis to believe that the special entity is advised by a qualified independent representative (as defined in proposed Rule 15F–5(a)), and the SBSD would be required to disclose to the special entity that it is not undertaking to act in the best interest of the special entity as otherwise required by section 15F(h)(4) of the Exchange Act.[345]

If an SBSD is acting as an advisor to a special entity, section 15F(h)(4)(C) and proposed Rule 15Fh–4(b) would require the SBSD 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.[346] The information that would be required to be collected to make this determination includes, but is not limited to: The authority of the special entity to enter into the transaction; the financial status and future funding needs of the special entity; the tax status of the special entity; the investment or financing objectives of the special entity; the experience of the special entity with respect to security-based swap transactions generally and of the type and complexity being recommended; whether the special entity has the financial capability to withstand changes in market conditions during the

Capital Requirements for Broker-Dealers, 77 FR 70340 (setting forth the text of paragraphs (e)(2)(iv)(F)(*1*) and (*2*) of proposed Rule 18a–1).

[324] *See* 17 CFR 240.17a–4(b)(12).

[325] *See* paragraph (b)(1)(x) of proposed Rule 18a–6.

[326] *See* 15 U.S.C. 78m–1(a)(1).

[327] *See* 15 U.S.C. 78m(m)(1)(G).

[328] *See* 15 U.S.C. 78m(m)(1)(C).

[329] Section 13(m)(1)(E) of the Exchange Act provides, among other things, that, with respect to cleared security-based swaps, the rule promulgated by the Commission related to public dissemination shall contain provisions that specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts and specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public. 15 U.S.C. 78m(m)(1)(E).

[330] *See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* 75 FR 75208.

[331] *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,* 78 FR 30968.

[332] *See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* 75 FR 75208.

[333] *See id.*

[334] *See* paragraph (b)(14) of Rue 17a–4, as proposed to be amended.

[335] *Compare* paragraph (b)(14) of Rule 17a–4, as proposed to be amended, *with* paragraphs (b)(1)(xi) and (b)(2)(vi) of proposed Rule 18a–6.

[336] *See* paragraphs (b)(1)(xi) and (b)(2)(vi) of proposed Rule 18a–6.

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

[338] *See id.*

[339] *See* paragraph (b)(15) of Rule 17a–4, as proposed to be amended.

[340] *Compare* paragraph (b)(15) of Rule 17a–4, as proposed to be amended, *with* paragraphs (b)(1)(xii) and (b)(2)(vii) of proposed Rule 18a–6.

[341] *See* paragraphs (b)(1)(xii) and (b)(2)(vii) of proposed Rule 18a–6.

[342] *See* 15 U.S.C. 78o–10(h)(4)(C).

[343] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42424.

[344] *See id.*

[345] *See id.*

[346] *See* 15 U.S.C. 78o–10(h)(4)(C); *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42423–42424.

term of the security-based swap; and other relevant information.[347]

Section 15F(h)(5)(A) and proposed Rule 15Fh–5 would require an SBSD or MSBSP that is acting as a counterparty to a special entity to have a reasonable basis to believe that the special entity has an independent representative that is independent of the SBSD or MSBSP and that meets certain specified qualifications, including that the independent representative:

- Has sufficient knowledge to evaluate the transaction and related risks;
- is not subject to a statutory disqualification;
- undertakes a duty to act in the best interests of the special entity;
- makes appropriate and timely disclosures to the special entity of material information concerning the security-based swap;
- will provide written representations to the special entity regarding fair pricing and appropriateness of the security-based swap;
- in the case of employee benefit plans subject to the Employee Retirement Income Security Act of 1974 (''ERISA''), is a fiduciary as defined in section 3(21) of ERISA; and
- in the case of a State, State agency, city, county, municipality, other political subdivision of a State, or governmental plan, is subject to restrictions on certain political contributions.[348]

The Commission is proposing to amend paragraph (b) of Rule 17a–4 to add a requirement that broker-dealer SBSDs and broker-dealer MSBSPs preserve records relating to the determinations made pursuant to section 15F(h)(4)(C) and section 15F(h)(5)(A) of the Exchange Act.[349] In addition, the Commission is proposing to include parallel requirements in paragraphs (b)(1) and (b)(2) of proposed Rule 18a–6.[350] Consequently, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be required to preserve the same types of records.[351]

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.[352] 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.[353] The Commission is proposing to amend paragraph (d) of Rule 17a–4 to add references to proposed Form SBSE–BD and proposed Form SBSE–W.[354] Forms SBSE and SBSE–W are the registration and withdrawal of registration forms, respectively, the Commission has proposed for broker-dealer SBSDs and broker-dealer MSBSPs.[355]

The Commission is proposing to include a parallel requirement in paragraph (c) of proposed Rule 18a–6 that is modeled on paragraph (d) of Rule 17a–4, as proposed to be amended.[356] This would require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to preserve the same types of records during the life of the enterprise.[357] Paragraph (c) of proposed Rule 18a–6 would reference proposed Form SBSE and proposed Form SBSE–A rather than proposed Form SBSE–BD because these are the registration forms that the Commission has proposed for SBSDs and MSBSPs that are not dually registered as broker-dealers.[358]

Associated Persons

As discussed above in section II.A.2.a. of this release, paragraph (a)(12) of Rule 17a–3 requires broker-dealers, which would include broker-dealer SBSDs and broker-dealer MSBSPs, to make and keep current records of information about associated persons of the broker-dealer.[359] The Commission is proposing to include parallel requirements in Rule 18a–5 to require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to make and keep current the same types of records.[360] Paragraph (e)(1) of Rule 17a–4 requires broker-dealers to maintain and preserve these 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.[361] The Commission is proposing to include a parallel record maintenance and preservation requirement in proposed Rule 18a–6 that would apply to the associated person records that stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be required to make and keep current.[362]

Regulatory Authority Reports

Paragraph (e)(6) of Rule 17a–4 requires broker-dealers, which would include broker-dealer SBSDs and broker-dealer MSBSPs, 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 exam report until three years after the date of the report.[363] The Commission is proposing to include parallel record maintenance and preservation requirements in proposed Rule 18a–6.[364] Specifically, paragraph (d)(2)(i) of proposed Rule 18a–6 would require stand-alone SBSDs and stand-alone MSBSPs to maintain and preserve in an easily accessible place each report which a regulatory authority has

[347] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42423–42424.

[348] *See id.* at 42428, n. 224.

[349] *See* paragraph (b)(16) of Rue 17a–4, as proposed to be amended.

[350] *Compare* paragraph (b)(16) of Rule 17a–4, as proposed to be amended, *with* paragraphs (b)(1)(xiii) and (b)(2)(viii) of proposed Rule 18a–6.

[351] *See* paragraphs (b)(1)(xiii) and (b)(2)(viii) of proposed Rule 18a–6.

[352] *See* 17 CFR 240.17a–4(d).

[353] *See id.*

[354] *See* paragraph (d) of Rule 17a–4, as proposed to be amended.

[355] *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).

[356] *Compare* paragraph (d) of Rule 17a–4, as proposed to be amended, *with* paragraph (c) of proposed Rule 18a–6.

[357] *See* paragraph (c) of proposed Rule 18a–6.

[358] *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 65802–65807.

[359] *See* 17 CFR 240.17a–3(a)(12). As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to this paragraph.

[360] *See* paragraphs (a)(10) and (b)(8) of proposed Rule 18a–5.

[361] *See* 17 CFR 240.17a–4(e)(1).

[362] *Compare* 17 CFR 240.17a–4(e)(1), *with* paragraph (d)(1) of proposed Rule 18a–6. Paragraph (h)(2) of proposed Rule 18a–6 would define the term associated person to have the same meaning as that term is defined in paragraph (c) of proposed Rule 18a–5.

[363] *See* 17 CFR 240.17a–4(e)(6). Paragraph (m)(3) of Rule 17a–4 defines the term *security regulatory authority* to have the meaning set forth in paragraph (h)(3) of Rule 17a–3. *See* 17 CFR 240.17a–4(m)(3). Paragraph (h)(3) of Rule 17a–3 defines the term *securities regulatory authority* to mean the Commission, any self-regulatory organization, or any securities commission (or any agency or office performing like functions) of the States. *See* 17 CFR 240.17a–3(h)(3). The Commission is proposing to amend this definition to include the CFTC and a prudential regulator to the extent the prudential regulator oversees security-based swap activities. *See* paragraph (f)(3) of Rule 17a–3, as proposed to be amended. Paragraph (h)(1) of proposed Rule 18a–6 would define the term *securities regulatory authority* in the same way as that term would be defined in paragraph (f)(3) of Rule 17a–3, as proposed to be amended. *Compare* paragraph (f)(3) of Rule 17a–3, as proposed to be amended, *with* paragraph (h)(1) of proposed Rule 18a–6. As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to paragraph (h)(3) of Rule 17a–3.

[364] *Compare* 17 CFR 240.17a–4(e)(6), *with* paragraphs (d)(2)(i) and (ii) of proposed Rule 18a–6.

requested or required the firm to make and furnish to it pursuant to an order or settlement, and each regulatory authority examination report until three years after the date of the report.[365] Paragraph (d)(2)(ii) of proposed Rule 18a–6 would require bank SBSDs and bank MSBSPs to maintain and preserve the same types of records for the same period of time, but only if the records relate to security-based swap activities.[366]

Compliance, Supervisory, and Procedures Manuals

Paragraph (e)(7) of Rule 17a–4 requires broker-dealers, which would include broker-dealer SBSDs and broker-dealer MSBSPs, to maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, 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.[367] The Commission is proposing to include parallel record maintenance and preservation requirements in proposed Rule 18a–6.[368] Specifically, paragraph (d)(3)(i) of proposed Rule 18a–6 would require stand-alone SBSDs and stand-alone MSBSPs to maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the firm with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the firm until three years after the termination of the use of the manual.[369] Paragraph (d)(3)(ii) of proposed Rule 18a–6 would require bank SBSDs and bank MSBSPs to maintain and preserve the same types of compliance, supervisory, and procedures manuals for the same period of time, but only if the manuals involve compliance with applicable laws and rules relating to security-based swap activities.[370]

Electronic Storage

Paragraph (f) of Rule 17a–4 provides that the records a broker-dealer, which would include a broker-dealer SBSD or a broker-dealer MSBSP, is required to maintain and preserve under Rule 17a–3 and Rule 17a–4 may be immediately produced or reproduced on micrographic media or by means of electronic storage media.[371] The rule defines the term *micrographic media* to mean microfilm or microfiche, or any similar medium.[372] The term *electronic storage media* is defined to mean any digital storage medium or system that meets the requirements set forth in paragraph (f) of Rule 17a–4.[373] Paragraph (f)(2) of Rule 17a–4 prescribes requirements that are specific to the use of electronic storage media and paragraph (f)(3) prescribes requirements that apply to micrographic media and electronic storage media.[374] These requirements are designed to ensure ready access to, and the reliability and permanence of, records a broker-dealer maintains and preserves using micrographic or electronic storage media.[375] Thus, the requirements, among other things, include safeguards against data erasure, provisions for immediate verification of stored material, and requirements for back-up facilities.[376]

The Commission is proposing to include a parallel record maintenance and preservation requirement in proposed Rule 18a–6, but only with respect to electronic storage media.[377] The Commission preliminarily believes that SBSDs and MSBSPs 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.[378] However, the Commission is seeking comment below on whether proposed Rule 18a–6 should permit micrographic media as an option.

Paragraph (e) of proposed Rule 18a–6 would permit stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to use electronic storage media to maintain and preserve the records required to be maintained and preserved under the rule.[379] The paragraph would prescribe requirements for using electronic storage media that parallel the requirements in paragraph (f) of Rule 17a–4, which, as discussed above, are designed to ensure ready access to, and the reliability and permanence of, the records.[380]

Prompt Production of Records

Rule 17a–4 contains provisions designed to ensure that the records a broker-dealer, including a broker-dealer SBSD or broker-dealer MSBSP, is required to maintain and preserve under the rule will be promptly produced to the Commission and other security-regulators. In this regard, paragraph (i) of Rule 17a–4 contains provisions that apply when a broker-dealer uses a third party to prepare or maintain the records required to be maintained and preserved pursuant to Rules 17a–3 and 17a–4.[381] In particular, the paragraph requires the third-party to 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 broker-dealer and will be surrendered promptly on request of the broker-dealer and including the following representation:

> With respect to any books and records maintained or preserved on behalf of [broker-dealer], 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.[382]

The Commission is proposing to include a parallel requirement in proposed Rule 18a–6 that would apply when a stand-alone SBSD, stand-alone

[365] *See* paragraph (d)(2)(i) of proposed Rule 18a–6.

[366] *See* paragraph (d)(2)(ii) of proposed Rule 18a–6.

[367] *See* 17 CFR 240.17a–4(e)(7). As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to this paragraph.

[368] *Compare* 17 CFR 240.17a–4(e)(7), *with* paragraphs (d)(3)(i) and (ii) of proposed Rule 18a–6.

[369] *See* paragraph (d)(3)(i) of proposed Rule 18a–6.

[370] *See* paragraph (d)(3)(ii) of proposed Rule 18a–6.

[371] *See* 17 CFR 240.17a–4(f). As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to this paragraph.

[372] *See* 17 CFR 240.17a–4(f)(1)(i).

[373] *See* 17 CFR 240.17a–4(f)(1)(ii). *See also Electronic Storage of Broker-Dealer Records,* 68 FR 25281 (Commission interpretation of electronic storage requirements in paragraph (f) of Rule 17a–4).

[374] *See* 17 CFR 240.17a–4(f)(2) and (3).

[375] *See Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934,* 62 FR 6469–6470.

[376] *See id.*

[377] *Compare* 17 CFR 240.17a–4(f), *with* paragraph (e) of proposed Rule 18a–6.

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

[379] *See* paragraph (e) of proposed Rule 18a–6.

[380] *Compare* 17 CFR 240.17a–4(f)(2) and (3), *with* paragraphs (e)(2) and (3) of proposed Rule 18a–6.

[381] *See* 17 CFR 240.17a–4(i). As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to this paragraph.

[382] *Id.*

MSBSP, bank SBSD, or bank MSBSP uses a third party to prepare or maintain records required pursuant to Rules 18a–5 and 18a–6.[383] Consequently, the third party would be required to file with the Commission an undertaking in which it agrees, among other things, to furnish to the Commission or its designee true, correct, complete, and current hard copy of any or all or any part of such books and records.[384]

Paragraph (j) of Rule 17a–4 requires a broker-dealer, which would include a broker-dealer SBSD or broker-dealer 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.[385] The Commission is proposing to include a parallel requirement in proposed Rule 18a–6.[386] Specifically, paragraph (g) of proposed Rule 18a–6 would require SBSDs and MSBSPs to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the SBSD or MSBSP that are required to be to be preserved under the rule, or any other records of the SBSD or MSBSP subject to examination or required to be made or maintained pursuant to section 15F of the Exchange Act, which are requested by a representative of the Commission.[387]

Request for Comment

The Commission generally requests comment on the proposals to require broker-dealers, SBSDs, and MSBSPs to maintain and preserve certain records. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Are the Commission's proposals regarding the records SBSDs and MSBSPs must maintain and preserve under Rule 17a–4, as proposed to be amended, and proposed Rule 18a–6 comprehensive enough to capture all records relating to their activities as SBSDs and MSBSPs, including records that must be made and/or maintained pursuant to provisions in section 15F of the Exchange Act that are not otherwise covered by Rule 17a–4, as proposed to be amended, and proposed Rule 18a–6? Conversely, are these proposals too broad? Explain why or why not. For example, should the Commission establish a catch-all record maintenance and preservation requirement in Rule 17a–4 and proposed Rule 18a–6 that applies to any record relating to the registrant's activities as an SBSD or MSBSP or required to be made and/or maintained pursuant to section 15F of the Exchange Act? Explain why or why not.

2. Are the provisions in Rule 17a–4 that would be included as parallel provisions in proposed Rule 18a–6 applicable to stand-alone SBSDs and stand-alone MSBSPs appropriate for these types of registrants? If not, explain why not. Are there alternative provisions the Commission should consider? If so, describe them. Are there provisions in Rule 17a–4 that are not being included as parallel provisions in proposed Rule 18a–6 applicable to stand-alone SBSDs and stand-alone MSBSPs that would be appropriate for these types of registrants? If so, explain why.

3. Are the provisions in Rule 17a–4 that would be included as parallel provisions in proposed Rule 18a–6 applicable to bank SBSDs and bank MSBSPs appropriate for these types of registrants? If not, explain why not. Are there alternative provisions the Commission should consider? If so, describe them. Are there provisions in Rule 17a–4 that are not being included as parallel provisions in proposed Rule 18a–6 applicable to bank SBSDs and bank MSBSPs that would be appropriate for these types of registrants? If so, explain why.

4. Are the recordkeeping provisions that would be added to Rule 17a–4 appropriate for broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs? If not, explain why not. Are there alternative provisions the Commission should consider? If so, describe them.

5. Should proposed Rule 18a–6 include a record storage provision that permits the use of micrographic media? If so, explain why.

6. The Commission proposes to establish a retention period for recordings of telephone calls related to security-based swaps that must be maintained in accordance with section 15F(g) of the Exchange Act. Should the Commission require broker-dealers, SBSDs, and/or MSBSPs to make recordings of telephone calls relating to security-based swaps? Should the Commission require broker-dealers, SBSDs, and/or MSBSPs to retain recordings of telephone calls relating to any topic? Explain why or why not.

7. Should the retention period for recorded telephone calls be different than the proposed three year period? For example, should it be a longer or shorter time frame? If the retention period should be different than three years, explain how long such recordings should be kept and why that different retention period would be more appropriate.

8. Are there recordkeeping requirements currently not included in these proposed rules that should be applied to ANC broker-dealer SBSDs? If so, please describe them.

9. Are there additional requirements that should be included in these proposed rules to promote compliance with the external business conduct standards for SBSDs and MSBSPs? If so, please describe them.

10. Are there additional requirements to promote the disaggregation by the reporting entities of composite security-based swap transactions into segments based on risk as opposed to limiting the data collected to the transaction documents? If so, please describe them.

b. Additional Proposed Amendments to Rule 17a–4

The Commission is proposing several amendments to Rule 17a–4 to eliminate obsolete text, improve readability, and modernize terminology. Reference is made throughout Rule 17a–4 to ''members'' of a national securities exchange as a distinct class of registrant

[383] *Compare* 17 CFR 240.17a–4(i), *with* paragraph (f) of proposed Rule 18a–6.

[384] *See* paragraph (f) of proposed Rule 18a–6.

[385] *See* 17 CFR 240.17a–4(j). 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. *See* 15 U.S.C. 78q(b). As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to this paragraph.

[386] *Compare* 17 CFR 240.17a–4(j), *with* paragraph (g) of proposed Rule 18a–6. 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. *See* 15 U.S.C. 78o–10(f)(1)(C). In addition, section 15F(j) of the Exchange Act 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. *See* 15 U.S.C. 78o–10(j). 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. *See* 15 U.S.C. 78o–10(j)(3).

[387] *See* paragraph (g) of proposed Rule 18a–6.

in addition to brokers-dealers. The Commission is proposing 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.[388] The Commission is proposing a second global change that would replace the phrase ''Every broker and dealer'' with ''Every broker or dealer''.[389]

The Commission is proposing a global change that would replace the use of the word ''shall'' in the rule with the word ''must'' or ''will'' where appropriate.[390] In paragraph (m) of Rule 17a–4 the Commission would replace the words ''shall have'' with the word ''has''.[391] The Commission also proposes to make certain stylistic, corrective, and punctuation amendments to improve the readability of Rule 17a–4.[392]

Further, as discussed above in section II.A.2.b. of this release, the Commission is proposing to eliminate the requirements in current paragraphs (c) and (d) of Rule 17a–3 and, as a consequence current paragraphs (e), (f), (g), and (h) would be redesignated as paragraphs (c), (d), (e), and (f), respectively. The Commission proposes to amend Rule 17a–4 to make corresponding changes to cross-references to these paragraphs of Rule 17a–3.

Proposed amendments to paragraph (a)(8) 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 insertion of paragraphs (a)(8)(xiv) and (a)(8)(xvi) to Rule 17a–4, as discussed above, the Commission proposes to redesignate paragraphs (a)(8)(xiv) and (a)(8)(xv) as paragraphs (a)(8)(xv) and (a)(8)(xvii), respectively.

Proposed amendments to paragraph (h) 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.

Request for Comment

The Commission generally requests comment on these additional proposed amendments to Rule 17a–4, including comment on whether any of the proposed amendments would result in substantive changes to the requirements applicable to broker-dealers.

B. Reporting

1. Introduction

As discussed above, section 764 of the Dodd-Frank Act added section 15F to the Exchange Act.[393] Section 15F(f)(2) provides that the Commission shall adopt rules governing reporting for SBSDs and MSBSPs.[394] Further, 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.[395] In addition, the Commission has concurrent authority under section 17(a)(1) of the Exchange Act to prescribe reporting requirements for broker-dealers.[396]

After considering the anticipated business activities of SBSDs and MSBSPs, the Commission is proposing to establish a reporting program for these registrants under sections 15F and 17(a) of the Exchange Act that is modeled on the reporting program for broker-dealers codified in Rule 17a–5.[397] Rule 17a–5—which was recently amended [398]—has two main elements: (1) A requirement that broker-dealers file periodic unaudited reports containing information about their financial and operational condition on a FOCUS Report; and (2) a requirement that broker-dealers 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 Public Company Accounting Oversight Board (''PCAOB'') in accordance with PCAOB standards.[399]

The reporting program established under Rule 17a–5 is designed, among other things, to promote compliance with Rules 15c3–1 and 15c3–3 and to assist the Commission, SROs, and state securities regulators in conducting effective examinations of broker-dealers. As the Commission has stated, the 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.'' [400] The broker-dealer reporting requirements promote transparency of the financial and operational condition of the broker-dealer to the Commission, the firm's DEA, and, in the case of a portion of the annual reports, to the public.[401] In the release adopting Rule 17a–5, the Commission stated its intention to periodically review the reporting requirements ''in order to continue modifying and updating the financial

[388] The proposed amendments would delete the word ''member'' from the title and from the following paragraphs of Rule 17a–4, as proposed to be amended: (a), (b), (b)(3), (b)(4), (b)(5), (b)(7), (c), (d), (e), (e)(1), (e)(6), (e)(7), (e)(8), (f)(2), (f)(3), (i), (j), (k)(1), (k)(2), and (l). *See* Rule 17a–4, as proposed to be amended.

[389] The proposed amendments would 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), (b), (c), (d), (e), and (j). *See* Rule 17a–4, as proposed to be amended.

[390] The proposed amendments would replace the word ''shall'' with the word ''must'' or ''will'' in the following paragraphs of Rule 17a–4, as proposed to be amended: (a), (b), (b)(11), (c), (d), (e), (e)(8), (f)(2), (f)(3), (g), (i), (j), (k)(1), and (l). *See* Rule 17a–4, as proposed to be amended.

[391] The proposed amendments would replace the phrase ''shall have'' with the word ''has'' in the following paragraphs of Rule 17a–4, as proposed to be amended: (m)(1), (m)(2), (m)(3), and (m)(4). *See* Rule 17a–4, as proposed to be amended.

[392] The Commission proposes the following stylistic and corrective changes to Rule 17a–4, as proposed to be amended: (1) In paragraph (a), replacing the phrases ''paragraphs §'' 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) of Rule 17a–4 for consistency with paragraph (b)(8)(ii) of Rule 17a–4; (3) replacing the phrase ''out of the money options'' with the phrase ''out-of-the-money options'' in paragraph (b)(8)(ix) of Rule 17a–4; (4) replacing the phrase ''paragraph (a)(12) of § 240.17a–3'' with the phrase ''§ 240.17a–3(a)(12)'' in paragraph (e)(1); (5) replacing the phrase ''paragraph (a)(13) of § 240.17a–3'' with the phrase ''§ 240.17a–3(a)(13)'' in paragraph (e)(2); (6) replacing the phrase ''paragraph (a)(15) of § 240.17a–3'' with the phrase ''§ 240.17a–3(a)(15)'' in paragraph (e)(3); (7) replacing the phrase ''for the life'' with the phrase ''during the life'' in paragraph (e)(3) of Rule 17a–4; (8) replacing the phrase ''paragraph (a)(14) of § 240.17a–13'' with ''§ 240.17a–13(a)(14)'' in paragraph (e)(4); (9) replacing the phrase ''this paragraph'' with the phrase ''this section'' in paragraph (f); (10) replacing the phrase ''each index'' with the phrase ''the index'' in paragraph (f)(3)(iv)(B); (11) replacing the phrase ''the self-regulatory organizations'' with the phrase ''any self-regulatory organization'' in paragraph (f)(3)(vi); (12) in paragraph (f)(3)(vii), adding quotation marks around the phrase ''the undersigned'' to clarify that the phrase is a defined term; (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. 78*o*)'' with the phrase ''section 15 of the Act (15 U.S.C. 78*o*''.

[393] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10.

[394] *See* 15 U.S.C. 78o–10(f)(2).

[395] *See* 15 U.S.C. 78o–10(f)(1)(A).

[396] *See* 15 U.S.C. 78q(a)(1).

[397] *See* 17 CFR 240.17a–5; 17 CFR 249.617.

[398] The recent amendments to Rule 17a–5 are discussed below. *See Broker-Dealer Reports,* Exchange Act Release No. 70073 (July 30, 2013), 78 FR 51910 (Aug. 21, 2013). These amendments will not be fully effective until June 1, 2014. This release refers to these amendments as the *recently adopted amendments* or *recently adopted requirements* of Rule 17a–5.

[399] *See id.* These requirements are described in more detail below.

[400] *See* Commission, *Study of Unsafe and Unsound Practices of Brokers and Dealers,* H.R. Doc. No. 231, 92d Cong., 1st Sess. 6 (1971) at 24.

[401] As discussed below in section II.B.3.a. of this release, paragraph (d) of Rule 17a–5 requires broker-dealers to file certain audited annual reports with the Commission. A portion of these reports is made public.

and operational reporting systems to keep pace with the changing securities industry.'' [402]

Under the proposed reporting program for SBSDs and MSBSPs, broker-dealer SBSDs and broker-dealer MSBSPs—as broker-dealers—would be subject to Rule 17a–5.[403] The Commission is proposing amendments to this rule to account for broker-dealers that are dually registered as an SBSD or MSBSP.[404] Stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be subject to proposed Rule 18a–7, which is modeled on Rule 17a–5, as proposed to be amended. Proposed Rule 18a–7 would not include a parallel requirement for every requirement in Rule 17a–5 because some of the requirements in Rule 17a–5 relate to activities that are not expected or permitted of SBSDs and MSBSPs. Similarly, while all types of SBSDs and MSBSPs would use proposed Form SBS, broker-dealer SBSDs and broker-dealer MSBSPs would be required to provide more information than stand-alone SBSDs and stand-alone MSBSPs.

Further, the reporting requirements in proposed Rule 18a–7 and proposed Form SBS applicable to bank SBSDs and bank MSBSPs are more limited in scope because, as discussed above in section I. of this release, bank SBSDs and bank MSBSPs are subject to reporting requirements applicable to banks. Further, the prudential regulators—rather than the Commission—are responsible for capital, margin, and other prudential requirements applicable to bank SBSDs and bank MSBSPs. For these reasons, the proposed reporting requirements for bank SBSDs and bank MSBSPs generally are designed to be tailored specifically to their activities as an SBSD or an MSBSP (as opposed to their activities as banks). However, as discussed below, the Commission is proposing that bank SBSDs and bank MSBSPs report certain general financial information that banks are required to report pursuant to requirements of the prudential regulators. Bank SBSDs and bank MSBSPs would be able to use the same information reported under the requirements of the prudential regulators to comply with the proposed reporting requirements applicable to bank SBSDs and bank MSBSPs. The objective is to provide the Commission with a means to monitor the financial condition of bank SBSDs and bank MSBSPs without requiring these entities to report information not already reported to their prudential regulators.

2. Periodic Filing of Proposed Form SBS

a. Amendments to Rule 17a–5 and Proposed Rule 18a–7

Undesignated Introductory Paragraph

Rule 17a–5, as proposed to be amended, would contain an undesignated introductory paragraph explaining that the rule applies to a broker-dealer, including a broker-dealer dually registered with the Commission as an SBSD or MSBSP.[405] The note further explains that an SBSD or MSBSP that is not dually registered as a broker-dealer (*i.e.,* a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP) is subject to the reporting requirements under proposed Rule 18a–7.[406] Further, the Commission is proposing to remove paragraph (a)(1) of Rule 17a–5, which provides that paragraph (a) shall apply to every broker-dealer registered pursuant to section 15 of the Exchange Act.[407] This text would be redundant of the undesignated introductory paragraph of Rule 17a–5, as proposed to be amended.[408]

Similarly, proposed Rule 18a–7 would contain an undesignated introductory paragraph explaining that the rule applies to an SBSD or MSBSP that is not dually registered as a broker-dealer.[409] The note further explains that a broker-dealer dually registered as an SBSD or MSBSP is subject to the reporting requirements under Rule 17a–5.[410]

Requirement To File Proposed Form SBS

Broker-dealers periodically report information about their financial and operational condition on the 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. Specifically: (1) The FOCUS Report Part IIA is designed to be used by a broker-dealer that does not hold customer funds or securities; [411] (2) the FOCUS Report Part II is designed to be used by a broker-dealer that holds customer funds or securities; [412] (3) the FOCUS Report Part IIB is designed to be used by an OTC derivatives dealer; [413] and (4) the FOCUS Report Part II CSE is designed to be used by an ANC broker-dealer.[414] The FOCUS Report Part II CSE elicits the most detailed information of the four parts, including the most detail about a firm's derivatives activities.

Paragraph (a) of Rule 17a–5 requires a broker-dealer, other than an OTC derivatives dealer, to file the FOCUS Report Part II or Part IIA.[415] The Commission is proposing to amend this paragraph so that it would require a broker-dealer that is dually registered as an SBSD or MSBSP to file proposed Form SBS rather than the FOCUS Report Part II or Part IIA and to add a parallel requirement in proposed Rule 18a–7 to require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and

[402] *See* Exchange Act Release No. 11935 (Dec. 17, 1975), 40 FR 59706, 59707 (Dec. 30, 1975).

[403] Except for the requirement to file one of the parts of the FOCUS Report, broker-dealer SBSDs and broker-dealer MSBSPs would be subject to all the reporting requirements applicable to broker-dealers under Rule 17a–5, as proposed to be amended, plus the additional requirements specifically applicable to an SBSD or MSBSP. As discussed below in section II.B.2. of this release, a broker-dealer SBSD or broker-dealer MSBSP would file proposed Form SBS rather than one of the parts of the FOCUS Report.

[404] As discussed below in section II.B.3.b. of this release, the Commission also is proposing technical amendments to Rule 17a–5.

[405] *See* undesignated introductory paragraph of Rule 17a–5, as proposed to be amended.

[406] *See id.*

[407] *See* 17 CFR 240.17a–5(a).

[408] *See* undesignated introductory paragraph of Rule 17a–5, as proposed to be amended.

[409] *See* undesignated introductory paragraph of proposed Rule 18a–7.

[410] *See id.*

[411] The FOCUS Report Part IIA is available at *http://www.sec.gov/about/forms/formx-17a–5_2f.pdf.*

[412] The FOCUS Report Part II is available at *http://www.sec.gov/about/forms/formx-17a–5_2.pdf.*

[413] The FOCUS Report Part IIB is available at *http://www.sec.gov/about/forms/formx-17a–5_2b.pdf.*

[414] The FOCUS Report Part II CSE was developed by the New York Stock Exchange, Inc. (''NYSE''). *See* Exhibit 3 to *Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Require Members That Use Appendix E To Calculate Net Capital To File Supplemental and Alternative Reports,* Exchange Act Release No. 51980 (July 6, 2005), 70 FR 40767 (July 14, 2005). *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 Alternative Reports,* Exchange Act Release No. 52269 (Aug. 16, 2005), 70 FR 49349 (Aug. 23, 2005).

[415] *See* 17 CFR 240.17a–5(a). The requirement that an OTC derivatives dealer file the FOCUS Report Part IIB is set forth in paragraph (a) of Rule 17a–12. *See* 17 CFR 240.17a–12(a). While an ANC broker-dealer is required under paragraph (a) of Rule 17a–5 to file the FOCUS Report Part IIA, 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 the FOCUS Report Part II CSE in lieu of the 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 Alternative Reports,* 70 FR 49349 (Commission approval of amendments to NYSE Rule 418 requiring ANC broker-dealers to file Part II CSE).

bank MSBSPs to periodically file proposed Form SBS.[416]

Currently, paragraph (a)(2) of Rule 17a–5 provides that a broker-dealer must file the FOCUS Report Part II if it clears transactions or carries customer accounts or the FOCUS Report Part IIA if it does not clear transactions or carry customer accounts.[417] The paragraph further provides that these reports must be filed within seventeen business days after the end of the quarter and within seventeen business days after the end of the fiscal year of the broker-dealer if the date of the fiscal year end is not the end of a calendar quarter.[418] Paragraph (a)(3) provides that reports required to be filed with the Commission under paragraph (a) (which includes the reports required under paragraph (a)(2)) shall 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-dealer has its principal place of business.[419] Paragraph (a)(3) further provides that all reports filed pursuant to paragraph (a) shall be deemed to be confidential.[420]

Notwithstanding these requirements, substantially all broker-dealers file the FOCUS Report directly with their SROs pursuant to plans established by the SROs under paragraph (a)(4) of Rule 17a–5 (rather than filing them directly with the Commission).[421] Generally, the reporting requirements under the SRO's plans are consistent with, or more rigorous than, the requirements in paragraph (a)(2) of Rule 17a–5 in terms of the part of the FOCUS Report a broker-dealer must file and the frequency of filing.[422] Thus, while most broker-dealers do not file the FOCUS Report pursuant to paragraphs (a)(2) and (a)(3) of Rule 17a–5, these provisions establish a baseline for SROs in designing their plans, which must be declared effective by the Commission.

The Commission is proposing to amend paragraph (a)(2) of Rule 17a–5 to account for the fact that some broker-dealers likely will be registered as an SBSD or potentially as an MSBSP and, therefore, these categories of registrants would be subject to the reporting requirements under Rule 17a–5.[423] The proposed amendments would require broker-dealer SBSDs and broker-dealer MSBSPs to file proposed Form SBS rather than the FOCUS Report Part II or Part IIA. Specifically, the amendments would specify that the requirement to file the FOCUS Report Part II or Part IIA directly with the Commission in paragraph (a) applies only to broker-dealers that are not dually registered as an SBSD or MSBSP.[424] In addition, the Commission proposes to add a new paragraph (a)(1)(iv) to Rule 17a–5.[425] This paragraph would provide that a broker-dealer dually registered as an SBSD or MSBSP must file proposed Form SBS with the Commission within seventeen business days of the end of the month.[426] Thus, the paragraph would require broker-dealer SBSDs and broker-dealer MSBSPs to file proposed Form SBS on a monthly basis. This would be consistent with the plans of the SROs, which generally require carrying broker-dealers and broker-dealers that act as dealers to file the FOCUS Report Part II on a monthly (rather than quarterly) basis.[427]

The Commission is proposing to include a parallel requirement in paragraph (a)(1) of proposed Rule 18a–7 that is modeled on paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended, that would apply to stand-alone SBSDs and stand-alone MSBSPs.[428] Under this paragraph, these registrants would be required to file proposed Form SBS with the Commission or its designee within seventeen business days after the end of each month.[429] The reference to a Commission *designee* is intended to provide the Commission with the option of requiring that these registrants file proposed Form SBS with a third party.[430]

Paragraph (a)(2) of proposed Rule 18a–7 would apply to bank SBSDs and bank MSBSPs and require these registrants to file proposed Form SBS with the Commission or its designee within seventeen business days after the end of each calendar quarter (instead of each month).[431] The Commission would require quarterly financial reporting for bank SBSDs and bank 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.[432] As discussed below in section II.B.3.a. of this release, the information that would be reported by bank SBSDs and bank

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[416] *Compare* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended, *with* paragraphs (a)(1) and (2) of proposed Rule 18a–7. As a consequence of the proposed removal of paragraph (a)(1) of Rule 17a–5, paragraphs (a)(2)(i), (a)(2(ii), and (a)(2)(iii) would be redesignated paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii), respectively. Further, as discussed below, the Commission is proposing to add a new paragraph (a)(1)(iv) to Rule 17a–5. As a consequence of the removal of paragraph (a)(1) and the addition of paragraph (a)(1)(iv), paragraph (a)(2)(iv) would be redesignated paragraph (a)(1)(v). Further, as a consequence of the removal of paragraph (a)(1), paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) of Rule 17a–5 would be redesignated paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6), respectively.

[417] *See* 17 CFR 240.17a–5(a)(2)(ii) and (iii).

[418] *See id.*

[419] *See* 17 CFR 240.17a–5(a)(3).

[420] *See id.*

[421] Specifically, paragraph (a)(4) of Rule 17a–5 contains an exception from the requirement to file the FOCUS Report directly with the Commission applicable to brokers-dealers that are members of a national securities exchange or a registered national securities association if the exchange or association maintains records containing the information required by the FOCUS Report and transmits such information to the Commission pursuant to a plan that has been submitted to, and declared effective by, the Commission (''FOCUS filing plan'' or ''Plan''). *See* 17 CFR 240.17a–5(a)(4). FINRA and other SROs have had FOCUS filing plans in effect since the 1970s under this exception. *See, e.g., Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Association's FOCUS Filing Plan,* Exchange Act Release No. 36780, (Jan. 26, 1996), 61 FR 3743 (Feb. 1, 1996).

[422] Currently, FINRA's plan (which applies to most broker-dealers) requires monthly filing of the FOCUS Report Part II for members that are subject to the requirements of paragraph (e) of Rule 15c3–3, or that conduct a business in accordance with paragraph (k)(2)(i) of Rule 15c3–3, or that are subject to paragraphs (a)(2)(i) through (iii) of Rule 15c3–1. *See* 17 CFR 240.15c3–1(a)(2)(i) through (iii); 17 CFR 240.15c3–3(e) and (k)(2)(i). FINRA's plan requires quarterly filing of the FOCUS Report Part IIA for members that conduct a business in accordance with the provisions of paragraph (k)(1)(i) through (iii), (k)(2)(ii), and (k)(3) of Rule 15c3–3 and are not subject to paragraphs (a)(2)(i) through (iii) of Rule 15c3–1, and for members that conduct a business in accordance with paragraphs (a)(6) through (8) of Rule 15c3–1. *See* 17 CFR 240.15c3–1(a)(2)(i) through (iii) and (a)(6) through (8); 17 CFR 240.15c3–3(k)(1)(i) through (iii), (k)(2)(ii), and (k)(3). These firms generally are non-carrying broker-dealers and firms that do not meet the definition of *dealer* under Rule 15c3–1. Further, as noted above, ANC broker-dealers file the FOCUS Report Part II CSE pursuant to FINRA Rule 4521(b) rather than the FOCUS Report Part II.

[423] As noted above, the Commission is proposing to redesignate paragraph (a)(2) of Rule 17a–5 as paragraph (a)(1).

[424] *See* paragraphs (a)(1)(ii) and (iii) of Rule 17a–5, as proposed to be amended.

[425] *See* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended.

[426] *See id.*

[427] Because this would be a monthly filing requirement, the Commission is not proposing to require broker-dealer SBSDs and broker-dealer MSBSPs to also file proposed Form SBS within 17 business days after the end of the fiscal year of the firm where that date is not the end of a calendar quarter as is required under paragraphs (a)(2)(ii) and (iii) of Rule 17a–5 (which require quarterly filing of the FOCUS Report Part II and Part IIA, respectively). *Compare* 17 CFR 240.17a–5(a)(2)(ii) and (iii), *with* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended.

[428] *Compare* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended, *with* paragraph (a)(1) of proposed Rule 18a–7.

[429] *See* paragraph (a)(1) of proposed Rule 18a–7.

[430] As discussed above, generally all broker-dealers file the FOCUS Report with their SROs rather than directly with the Commission.

[431] *See* paragraph (a)(2) of proposed Rule 18a–7.

[432] *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.

MSBSPs on proposed Form SBS largely would be information that banks are required to provide in the call reports.

Paragraph (a)(3) of proposed Rule 18a–7 would apply to SBSDs authorized by the Commission to compute net capital using internal models pursuant to paragraph (d) of proposed Rule 18a–1. The Commission would require these registrants to file most of the required documents within 17 business days after the end of each month.[433] However, to correspond with the timing requirement in paragraph (d)(9)(i)(C)(*1*)–(*2*) of proposed Rule 18a–1,[434] these registrants 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 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.[435]

The Commission also is proposing amendments to paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), and (a)(1)(v) of Rule 17a–5 that would make explicit the requirement that the FOCUS Report or Form SBS filed by a broker-dealer must be ''executed.'' [436] Additionally, paragraphs (a)(1) and (a)(2) of proposed Rule 18a–7 would contain parallel language requiring that a Form SBS filed by a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP must be executed.

Finally, as noted above, paragraph (a)(4) of Rule 17a–5 contains an exception from the requirement to file a FOCUS Report directly with the Commission applicable to broker-dealers that are members of a national securities exchange or a registered national securities association if that exchange or association maintains records containing the information required by the FOCUS Report and transmits such information to the Commission pursuant to a plan that has been submitted to, and declared effective by, the Commission.[437] The Commission proposes to add a reference to proposed Form SBS to this provision so that SROs could include the filing of Form SBS in their plans.[438] If incorporated into the plans, broker-dealer SBSDs and broker-dealer MSBSPs would file proposed Form SBS with their SRO (rather than directly with the Commission). The Commission preliminarily expects that the reporting requirements under an SRO's plan with respect to proposed Form SBS would need to be at least as rigorous as the requirements in paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended, to be declared effective by the Commission.

b. Information Elicited in Form SBS

As discussed above, all categories of SBSDs and MSBSPs would be required to file proposed Form SBS. This form is modeled on the FOCUS Report, particularly the FOCUS Report Part II CSE.[439] The FOCUS Report Part II CSE served as the template for designing proposed Form SBS because it is designed to account for the use of internal models by ANC broker-dealers and elicits more detailed information about derivatives positions and exposures than the FOCUS Report Part II and Part IIA.[440] 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.[441]

The FOCUS Report elicits financial and operational information about a broker-dealer through sections consisting of uniquely numbered line items. The information (*e.g.,* a number or dollar amount) is entered into the line items.[442] Generally, a line item that is common to Part II, Part IIA, Part IIB, and Part II CSE of the FOCUS Report shares the same unique number, which facilitates aggregating information and comparing reported information across broker-dealers.[443] Proposed Form SBS similarly would elicit information about the financial and operational condition of an SBSD or MSBSP through sections consisting of uniquely numbered line items. Line items on proposed Form SBS that correspond to line items on the FOCUS Report would share the same unique number and require the entry of the same type of information.[444] Proposed Form SBS would not include a parallel line item for each line item on the FOCUS Report because not all of the information required on the FOCUS Report is relevant for SBSDs and MSBSPs.[445] Further, proposed Form

[433] *See* paragraph (a)(3)(i)–(vii) of proposed Rule 18a–7.

[434] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70337.

[435] *See* paragraph (a)(3)(viii)–(ix) of proposed Rule 18a–7.

[436] *See* paragraphs (a)(1)(ii)–(iv) of Rule 17a–5, as proposed to be amended. Part II, Part IIA, Part IIB, and Part II CSE of the FOCUS Report each has a section for the filer to execute the form.

[437] *See* 17 CFR 240.17a–5(a)(4).

[438] *See* paragraph (a)(3) of Rule 17a–5, as proposed to be amended. Further, paragraph (a)(5) of Rule 17a–5 requires broker-dealers to file Form Custody (17 CFR 249.1900) with their DEAs 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-dealer where that date is not the end of a calendar quarter. *See* 17 CFR 240.17a–5(a)(5). The DEA 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 the FOCUS Report pursuant to a plan. *See id.* The Commission is proposing to amend this provision to include a reference to proposed Form SBS to account for the fact that broker-dealer SBSDs and broker-dealer MSBSPs would file proposed Form SBS with their DEAs along with Form Custody (rather than the FOCUS Report) if the SROs incorporate the filing of Form SBS in their plans. *See* paragraph (a)(4) of Rule 17a–5, as proposed to be amended.

[439] *Compare* proposed Form SBS, *with* the FOCUS Report Part II CSE.

[440] The FOCUS Report Part IIB elicits similar information about derivatives positions and exposures but otherwise is more limited than the FOCUS Report Part II CSE because OTC derivatives dealers are permitted to engage in only a narrow range of activities. *See* 17 CFR 240.3b–12; 17 CFR 240.15a–1. Specifically, Rule 3b–12, defining the term OTC derivatives dealer, provides, among other things, that an OTC derivatives dealer's securities activities must be limited to engaging in dealer activities in eligible OTC derivative instruments (as defined in the rule) that are securities; issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities, and structured notes; engaging in cash management securities activities (as defined in Rule 3b–14 (17 CFR 240.3b–14); engaging in ancillary portfolio management securities activities (as defined in the rule); and engaging in such other securities activities that the Commission designates by order. *See* 17 CFR 240.3b–12. Rule 15a–1, governing the securities activities of OTC derivatives dealers, provides that an OTC derivatives dealer must effect transactions in OTC derivatives with most types of counterparties through an affiliated Commission-registered broker-dealer that is not an OTC derivatives dealer. *See* 17 CFR 240.15a–1.

[441] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70293.

[442] As used in this release, the term *line* refers to the lines in the left column on the FOCUS Report and proposed Form SBS 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 financial condition section on Form SBS is *cash* and Line Item 200 is the field to enter the dollar amount of cash and Line Item 750 is the field to enter the total dollar amount of cash.

[443] For example, Line Item 200 is the field to enter the dollar amount of cash and Line Item 750 is the field to enter the total dollar amount of cash in the statement of financial condition section for each part of the FOCUS Report. The FOCUS Report Part IIB and Part II CSE share certain common sections that have common entries but the line items for the entries are assigned different numbers. Proposed Form SBS would use the numbers assigned to the line items in Part II CSE.

[444] For example, Line Item 200 is the field to enter the dollar amount of cash and Line Item 750 is the field to enter the total dollar amount of cash in the statement of financial condition section on proposed Form SBS.

[445] The FOCUS Report Part II CSE has the most line items of the four parts of the FOCUS Report and, consequently, generally will serve as the means of comparing proposed Form SBS with the FOCUS Report for purposes of the discussion in

SBS would have lines and corresponding line items that are not on the FOCUS Report. The additional lines and line items would elicit more detail about the security-based swap and swap activities of the SBSD and MSBSP filers.[446]

As discussed below, broker-dealer SBSDs and broker-dealer MSBSPs would be required to report the most information on proposed Form SBS because it would elicit information about their activities as a broker-dealer and as an SBSD or MSBSP. Stand-alone SBSDs and stand-alone MSBSPs would be required to report information similar to that required of broker-dealer SBSDs and broker-dealer MSBSPs. The information elicited from bank SBSDs and bank MSBSPs would: (1) Derive largely from the information they report on the call reports; and (2) focus on their business as an SBSD or MSBSP.[447]

Proposed Form SBS is divided into five parts. Part 1 would apply to nonbank SBSDs and nonbank MSBSPs (*i.e.,* broker-dealer SBSDs, broker-dealer MSBSPs, stand-alone SBSDs, and stand-alone MSBSPs) and is similar to the FOCUS Report Part II CSE, but includes additional sections and line items to elicit more detail about security-based swap and swap activities. Part 2 would apply to bank SBSDs and bank MSBSPs and elicit certain financial information that these classes of registrants—as banks—would need to report in the call reports plus certain additional information about security-based swap and swap activities. Part 3 would apply to an SBSD or MSBSP that is dually registered as an FCM and elicit information about the firm's net capital computation and segregation of customer assets under CFTC rules. Part 4 would apply to nonbank SBSDs and nonbank MSBSPs and elicit detailed information about a firm's security-based swap and swap positions, counterparties, and exposures. Part 5 would apply to bank SBSDs and bank MSBSPs and also elicit detailed information about a firm's security-based swap and swap positions, but on a more limited basis than Part 4.

Proposed Form SBS would have a cover page that largely is in the same format as the cover page of the FOCUS Report, but includes line items to indicate the type of registrant filing Form SBS: (1) A stand-alone SBSD; (2) a stand-alone MSBSP; (3) a broker-dealer SBSD; (4) a broker-dealer MSBSP; (5) a bank MSBSP; or (6) a bank MSBSP. The heading at the top of each remaining page of proposed Form SBS would identify the type of registrant that must enter the information to be reported on the page.

A general description of each Part of proposed Form SBS appears below, including a more detailed description of the components of Form SBS for which there are not parallel components in the FOCUS Report. In addition to proposed Form SBS, the Commission is proposing instructions for Form SBS to provide further guidance on the information to be entered into certain line items.[448] The instructions are modeled on the instructions to the FOCUS Report Part II, but with more instructions to cover the additional line items and sections that are not on the FOCUS Report Part II.[449]

i. Part 1 of Proposed Form SBS

Part 1 of proposed Form SBS would apply to nonbank SBSDs and nonbank MSBSPs. This part of Form SBS is modeled on the FOCUS Report, particularly the FOCUS Report Part II CSE, but includes additional sections and line items to report more detail about security-based swap and swap activities.[450] Like the FOCUS Report Part II CSE, Part 1 of proposed Form SBS would require the filer to enter information into the following sections, as applicable: (1) A statement of financial condition;[451] (2) a computation of net capital;[452] (3) a computation of minimum net capital required;[453] (4) a statement of income (loss);[454] (5) a statement of capital withdrawals, a statement of changes in ownership equity, and a statement of changes in liabilities subordinated to claims of creditors;[455] (6) certain

this release. Proposed Form SBS would not include line items from Part II CSE that are obsolete, inapplicable, or redundant of the additional line items on proposed Form SBS. Specifically, proposed Form SBS would not include Line Item 18 (box checked if FOCUS Part II CSE is filed pursuant to Rule 17a–11 under the Exchange Act); Line Item 98 (SEC File No.); Line Item 99 (As of date the for statement of financial condition); Line Item 291 (Derivatives Receivable—Allowable); Line Item 801 (Derivatives Payable—Total); Line Item 3635 (Total Market Risk Exposure); Line Item 3679 (Total Credit Risk Exposure); Line Item 3931 (Number of months included in this statement); Line Item 3932 (For the period from); Line Item 3933 (For the period to); Line Item 4070 (Interest Expense, Includes interest on accounts subject to subordination agreements); and Line Items 5000–5350 (Financial and operational data).

[446] Line items that are unique to proposed Form SBS are identified on the Form by the number 99, 999, 9999, or 99999 for the purposes of this proposing release.

[447] *See* 15 U.S.C. 78o–10(f)(1)(B)(i).

[448] *See* instructions to proposed Form SBS.

[449] *Compare* instructions to proposed Form SBS, *with* instructions to the FOCUS Report Part II. The instructions to the FOCUS Report Part IIA are available at *http://www.sec.gov/about/forms/formx-17a–5_2a.pdf*.

[450] *Compare* Part 1 proposed Form SBS, *with* the FOCUS Report Part II CSE. As discussed below, the FOCUS Report has a number of sections that are common to all the parts thereof. Generally, a section on the FOCUS Report Part II CSE elicits information that is as detailed, if not more detailed, than the parallel section on the FOCUS Report Part II, Part IIA, or Part IIB.

[451] Each part of the FOCUS Report has a section to provide a statement of financial condition that elicits detail about the assets, liabilities and ownership equity of the broker-dealer. Part 1 of proposed Form SBS similarly has a section to provide a statement of financial condition. *See* Part 1 of proposed Form SBS, *Statement of Financial Condition.* This section would need to be completed by nonbank SBSDs and nonbank MSBSPs. As discussed below, the statement of financial condition section on proposed Form SBS has additional line items that are not on the FOCUS Report.

[452] Each part of the FOCUS Report has a section to provide a computation of net capital under Rule 15c3–1. Part 1 of proposed Form SBS similarly has sections to provide a computation of net capital that would need to be completed by nonbank SBSDs (*i.e.,* broker-dealer SBSDs and stand-alone SBSDs) and broker-dealer MSBSPs (all of which would be subject to a net capital rule). *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Authorized to use Models)* and *Computation of Net Capital (Filer Not Authorized to use Models).* As discussed below, proposed Form SBS has two net capital computation sections: one for firms that are authorized to use models and one for firms that are not authorized to use models. Further, these sections have additional line items that are not on the FOCUS Report.

[453] Each part of the FOCUS Report has a section to provide a computation of minimum required net capital under Rule 15c3–1. Part 1 of proposed Form SBS similarly has sections to provide a required minimum net capital computation that would need to be completed by nonbank SBSDs and broker-dealer MSBSPs. *See* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Broker-Dealer)* and *Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer).* As discussed below, proposed Form SBS has two minimum net capital computation sections: one for broker-dealer filers (*i.e.,* broker-dealer SBSDs and broker-dealer MSBSPs) and one for stand-alone SBSDs. Further, these sections have additional line items that are not on the FOCUS Report.

[454] Each part of the FOCUS Report has a section to provide a statement of income (loss) that elicits detail about the revenue and expenses of the broker-dealer during the reporting period. Part 1 of proposed Form SBS similarly has a statement of income (loss) section that would need to be completed by nonbank SBSDs and nonbank MSBSPs. *See* Part 1 of proposed Form SBS, *Statement of Income (Loss).* As discussed below, the statement of income (loss) section on proposed Form SBS is modeled on a supplemental statement of income form promulgated by FINRA. The proposed Form SBS section has additional line items that are not on FINRA's form.

[455] The FOCUS Report Part II, Part IIB, and Part II CSE have sections to provide a statement of capital withdrawals, a statement of changes in ownership equity, and a statement of changes in liabilities subordinated to claims of general creditors. The FOCUS Report Part IIA has sections to provide a statement of changes in ownership equity and a statement of changes in liabilities subordinated to claims of general creditors. In the statement of capital withdrawals section, a broker-dealer must report information about the firm's ownership equity and subordinated liabilities maturing or proposed to be withdrawn within the next six months and accruals that have not been deducted in the computation of net capital. In the statements of changes in ownership equity and

Continued

financial and operational data;[456] (7) a customer reserve account computation under Rule 15c3–3;[457] (8) information for possession or control requirements under Rule 15c3–3;[458] and (9) a computation for the determination of reserve requirements for proprietary accounts of broker-dealers (''PAB'').[459]

Part 1 of proposed Form SBS includes additional line items in certain of these sections to elicit more detail about security-based swap and swap activities.[460] Further, Part 1 has the following additional sections: (1) a computation of tangible net worth under proposed Rule 18a–2;[461] (2) a reserve account computation under proposed Rule 18a–4;[462] and (3) information for possession or control requirements under proposed Rule 18a–4.[463] The additional line items and sections are discussed below.

Statement of Financial Condition

The line items in the statement of financial condition section on proposed Form SBS are largely the same line items in the statement of financial

liabilities subordinated to claims of general creditors sections, a broker-dealer must report the amount of such equity and liability balances, respectively, as of the beginning of the reporting period and as of the end of the reporting period and provide detail with respect to changes in the balances. The information reported in all these statements is designed to assist securities regulators in monitoring the financial condition of the broker-dealer and the firm's compliance with the net capital rule. For example, under Rule 15c3–1, broker-dealers are subject to debt-to-equity ratio requirements, limitations governing the withdrawal of equity capital, and requirements with respect to subordinated loans that qualify to be added back to net worth when computing net capital. *See* 17 CFR 240.15c3–1d ; 17 CFR 240.15c3–3(d) and (e). Nonbank SBSDs and broker-dealer MSBSPs would be subject to similar requirements and limitations. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70254–70256. Consequently, Part 1 of proposed Form SBS has sections to provide a statement of capital withdrawals, a statement of changes in ownership equity, and a statement of changes in liabilities subordinated to claims of creditors that would need to be completed by nonbank SBSDs and broker-dealer MSBSPs. *See* Part 1 of proposed Form SBS, *Capital Withdrawals* and *Capital Withdrawals Recap.* These sections on proposed Form SBS have the same line items as the parallel sections on the FOCUS Report Part II CSE and there are no additional line items.

[456] Each part of the FOCUS Report has a section to report certain financial and operational data. The FOCUS Report Part II CSE has additional sections to report operational charges deducted from net capital under Rule 15c3–1 and potential operational charges. Broker-dealers must report information on these sections about, among other things, the number of income and non-income producing personnel, fails, security concentrations, lease and rentals payables, money suspense and balancing differences, and securities differences. Certain of these items—including securities differences—result in charges when computing net capital. *See* 17 CFR 240.15c3–1(c)(2)(v). Securities regulators use this information to monitor, among other things, whether the broker-dealer is processing securities transactions in a timely manner and properly accounting for the securities it holds. Part 1 of proposed Form SBS similarly has sections to report this type of financial and operational data that would need to be completed by nonbank SBSDs and broker-dealer MSBSPs. *See* Part 1 of proposed Form SBS, *Financial and Operational Data.* The sections of the form have the same line items as the parallel sections in the FOCUS Report Part II CSE and there are no additional line items.

[457] The FOCUS Report Part II and Part II CSE have a section to provide a computation of the customer reserve requirement under Rule 15c3–3. As discussed above in section II.A.2.a. of this release, Rule 15c3–3 requires a carrying broker-dealer to maintain a reserve of funds or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers. *See* 17 CFR 240.15c3–3(e). The amount of net cash owed to customers is computed pursuant to a formula set forth in Exhibit A to Rule 15c3–3. *See* 17 CFR 240.15c3–3a. Part 1 of proposed Form SBS similarly has a section to provide a computation of the customer reserve requirement under Rule 15c3–3 that would need to be completed by broker-dealer SBSDs and broker-dealer MSBSPs that hold funds and securities for customers that are not security-based swap customers. *See* Part 1 of proposed Form SBS, *Computation for Determination of Reserve Requirements.* This section has the same line items as the parallel section on the FOCUS Report Part II CSE and there are no additional line items. Further, as discussed below, proposed Form SBS has a section to provide a separate computation for the security-based swap customer reserve account requirement under proposed Rule 18a–4. In addition, the FOCUS Report Part IIA has a section to claim an exemption under Rule 15c3–3. In this section, a broker-dealer claiming an exemption under Rule 15c3–3 must identify whether it is relying on paragraph (k)(1), (k)(2)(A), (k)(2)(B), or (k)(3) of Rule 15c3–3. Part 1 of proposed Form SBS similarly has a section in which a broker-dealer SBSD or broker-dealer MSBSP could claim an exemption from Rule 15c3–3. *See* Part 1 of proposed Form SBS, *Exemptive Provision under Rule 15c3–3.*

[458] The FOCUS Report Part II and Part II CSE have a section to report information relating to the possession or control requirement under Rule 15c3–3. As discussed above in section II.A.2.a. of this release, Rule 15c3–3 requires a carrying broker-dealer to maintain physical possession or control over customers' fully paid and excess margin securities. *See* 17 CFR 240.15c3–3(d). Physical possession or control means the carrying broker-dealer must hold these securities in one of several locations specified in Rule 15c3–3 and free of liens or any other interest that could be exercised by a third party to secure an obligation of the broker-dealer. *See* 17 CFR 240.15c3–3(c). Part 1 of proposed Form SBS similarly has a section to report the same information about the possession or control requirement under Rule 15c3–3 as is required in the FOCUS Report Part II and Part II CSE. *See* Part 1 of proposed Form SBS, *Computation for Determination of Reserve Requirements.* This section would need to be completed by broker-dealer SBSDs and broker-dealer MSBSPs that hold funds and securities for customers that are not security-based swap customers. This section has the same line items as the parallel section on the FOCUS Report Part II CSE and there are no additional line items. Further, as discussed below, proposed Form SBS has a section to report the same type of information about the possession or control requirement relating to security-based swap customers under proposed Rule 18a–4.

[459] The FOCUS Report Part II CSE has a section to provide the computation of the reserve requirement for proprietary accounts of broker-dealers. This computation is a result of a broker-dealer not being a *customer* as that term is defined in Rule 15c3–3. *See* 17 CFR 240.15c3–3(a)(1). Accordingly, a carrying broker-dealer that holds the account of another broker-dealer is not required to maintain possession or control of the fully paid and excess margin securities of the other the broker-dealer or include credit and debit items associated with the account of the other broker-dealer in its customer reserve computation. The absence of a requirement to protect the other broker-dealer's cash under Rule 15c3–3 raised a question of whether the other broker-dealer could treat cash held by the carrying broker-dealer as an allowable asset under Rule 15c3–1. In response, the Commission staff issued a no-action letter stating that the staff would not recommend enforcement action to the Commission if a broker-dealer treated cash held by another broker-dealer as an allowable asset under Rule 15c3–1, provided the other broker-dealer agreed to: (1) perform a reserve computation for broker-dealer accounts; (2) establish a separate special reserve bank account, and; (3) maintain cash or qualified securities in the reserve account equal to the computed reserve requirement. *See* Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Raymond J. Hennessy, Vice President, NYSE, and Thomas Cassella, Vice President, NASD regulation, Inc. (Nov. 10, 1998). The Commission recently codified this letter through amendments to Rule 15c3–3. *See Financial Responsibility Rules for Broker-Dealers,* Exchange Act Release No. 70072 (July 30, 2013); 78 FR 51824 (Aug. 21, 2013). Part 1 of proposed Form SBS similarly has a section to provide a computation of PAB reserve requirements. *See* Part 1 of proposed Form SBS, *Computation for Determination of PAB Requirements.* This section would need to be completed by broker-dealer SBSDs and broker-dealer MSBSPs. The section has the same line items as the parallel section on the FOCUS Report Part II CSE and there are no additional line items.

[460] As noted above, additional line items are identified on proposed Form SBS by the number 99, 999, 9999, or 99999 for the purposes of this proposing release.

[461] Proposed Rule 18a–2 would require stand-alone MSBSPs to maintain positive tangible net worth. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257. Under proposed Rule 18a–2, *tangible net worth* would be defined to mean the MSBSP's net worth as determined in accordance with generally accepted accounting principles in the U.S., excluding goodwill and other intangible assets.

[462] As discussed above in section II.A.2.a. of this release, proposed Rule 18a–4 would require an SBSD, among other things, to maintain a security-based swap customer reserve account at a bank separate from any other bank account of the SBSD. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70282–70287. Further, it would provide that the SBSD must at all times maintain in the security-based swap customer reserve account cash and/or qualified securities in amounts computed daily in accordance with Exhibit A to proposed Rule 18a–4. *See id.*

[463] As discussed above in section II.A.2.a. of this release, proposed Rule 18a–4 would require an SBSD to promptly obtain and thereafter maintain physical possession or control of all excess securities collateral carried for the accounts of security-based swap customers. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70278–70282.

condition section on the FOCUS Report Part II CSE.[464] However, as discussed below, the proposed Form SBS section has additional line items that are not in the Part II CSE section.

First, a broker-dealer must enter detail in the FOCUS Report Part II CSE section about the dollar amount of receivables from other broker-dealers and clearing organizations.[465] The detail includes the amount of such receivables includible in the reserve computation under Rule 15c3–3.[466] The proposed Form SBS section requires the same detail about these receivables.[467] Additionally, it requires detail about the dollar amount of the receivables includible in the reserve computation under proposed Rule 18a–4.[468]

Second, a broker-dealer must enter detail in the FOCUS Report Part II CSE section about the dollar amount of payables to other broker-dealers and clearing organizations.[469] The detail includes the amount of such payables includible in the reserve computation under Rule 15c3–3.[470] The proposed Form SBS section requires the same detail about these payables.[471] Additionally, it requires detail about the dollar amount of the payables includible in the reserve computation under proposed Rule 18a–4.[472]

Third, a broker-dealer must enter detail in the FOCUS Report Part II CSE section about the dollar amount of payables to securities and commodities customers.[473] The broker-dealer also must provide the dollar amount of the payable to securities customers representing free credit balances.[474] The proposed Form SBS section requires the same detail about payables to securities and commodities customers.[475] Additionally, it requires detail about the dollar amount of payables to security-based swap customers, including the amount of the payables representing free credits, and the amount of payables to swap customers.[476]

Fourth, a broker-dealer must enter into the FOCUS Report Part II CSE section the dollar amount of payables to securities and commodities non-customers.[477] The proposed Form SBS section requires the entry of the same information.[478] Additionally, it requires the entry of the dollar amount of the payables to security-based swap and swap non-customers.[479]

Computation of Net Capital

Nonbank SBSDs and broker-dealer MSBSPs would need to complete a computation of net capital section on proposed Form SBS.[480] Unlike the FOCUS Report Part II CSE, there are two sections on proposed Form SBS: One applicable to filers that are authorized to use internal models; and one applicable to filers that are not authorized to use internal models.[481]

Computation for Filers Authorized to use Models. The line items in the net capital computation section on proposed Form SBS applicable to filers authorized to use models are largely the same line items in the computation of net capital section on the FOCUS Report Part II CSE.[482] However, as discussed below, the proposed Form SBS section has additional line items that are not on the FOCUS Report Part II CSE section.

First, a broker-dealer must enter detail in the Part II CSE section about deductions and other charges that the firm must subtract from net worth, including the total dollar amount of non-allowable assets from the *Statement of Financial Condition*.[483] The detail includes charges for under-margined securities accounts of customers and non-customers,[484] and under-margined accounts of commodities customers and non-customers.[485] The proposed Form SBS section would require the same detail about these deductions.[486] In addition, the section would require detail about the amount of deductions for under-margined accounts of security-based swap customers and non-customers,[487] and under-margined

[464] *Compare* Part 1 of proposed Form SBS, *Statement of Financial Condition, with* the FOCUS Report Part II CSE, *Statement of Financial Condition.*

[465] *See* FOCUS Report Part II CSE, *Statement of Financial Condition,* Lines 3A–3E.

[466] *See* FOCUS Report Part II CSE, *Statement of Financial Condition,* Lines 3A1, 3B1, 3C1, and 3D1.

[467] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 3A–3E.

[468] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 3A2, 3B2, 3C2, and 3D2. As discussed in section II.A.2.a. of this release, proposed Rule 18a–4 is modeled on Rule 15c3–3. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70274–70288.

[469] *See* FOCUS Report Part II CSE, *Statement of Financial Condition,* Lines 21A–21E.

[470] *See* FOCUS Report Part II CSE, *Statement of Financial Condition,* Lines 21A1, 21B1, 21C1, and 21D1.

[471] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 20A–20E.

[472] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 20A2, 20B2, 20C2, and 20D2.

[473] *See* FOCUS Report Part II CSE, *Statement of Financial Condition,* Lines 22A–22B.

[474] *See* FOCUS Report Part II CSE, Line Item 950.

[475] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 21A–21B.

[476] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 21C–21D.

[477] *See* FOCUS Report Part II CSE, *Statement of Financial Condition,* Lines 23A–23B.

[478] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 22A–22B.

[479] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 22C–22D.

[480] Broker-dealer SBSDs and broker-dealer MSBSPs—as broker-dealers—would be subject to Rule 15c3–1 and, therefore, would be required to compute *net capital* as that term is defined in the rule. *See* 17 CFR 240.15c3–1(c)(2). Stand-alone MSBSPs would be subject to a tangible net worth capital standard pursuant to proposed Rule 18a–2, and therefore, would not compute net capital. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257. The Commission has proposed that stand-alone SBSDs be subject to a net capital requirement in proposed Rule 18a–1 that is modeled on Rule 15c3–1. *See id.* at 70217–70257. Under proposed Rule 18a–1, stand-alone SBSDs would be required to compute *net capital* as defined in proposed Rule 18a–1. *See id.* The definition in proposed Rule 18a–1 is modeled on the definition in Rule 15c3–1 and, consequently, proposed Form SBS does not have separate net capital computation sections for broker-dealer filers and stand-alone SBSD filers.

[481] All broker-dealers that file the FOCUS Report Part II CSE have been approved to use models. Accordingly, it does not need to have a computation for broker-dealers not approved to use models.

[482] *Compare* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Authorized to Use Models), with* FOCUS Report Part II CSE, *Computation of Net Capital.*

[483] *See* FOCUS Report Part II CSE, *Computation of Net Capital,* Line 6A.

[484] *See* FOCUS Report Part II CSE, *Computation of Net Capital,* Line 6A1. Paragraph (c)(2)(xii) of Rule 15c3–1 requires a broker-dealer to deduct the amount of cash required in each customer's or non-customer's account to meet the maintenance margin requirements of the DEA for the broker-dealer, after application of calls for margin, marks to the market or other required deposits which are outstanding five business days or less. *See* 17 CFR 240.15c3–1(c)(2)(xii). Broker-dealers are subject to maintenance margin requirements in rules promulgated by their DEAs. *See, e.g.,* FINRA Rules 4210 through 4240.

[485] *See* FOCUS Report Part II CSE, *Computation of Net Capital* Line 6A2. Paragraphs (a)(3)(xii) and (a)(3)(xiii) of Appendix B to Rule 15c3–1 prescribe capital deductions for under-margined customer and non-customer commodity accounts. *See* 17 CFR 240.15c3–1b(a)(3)(xii) and (xiii).

[486] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Authorized to Use Models),* Lines 6A1–6A2.

[487] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Authorized to Use Models),* Line 6A3. The Commission has proposed that nonbank SBSDs be required to deduct the amount of cash required in the account of each security-based swap customer to meet the margin requirements of a clearing agency, DEA, or the Commission, after application of calls for margin, marks to the market, or other required deposits which are outstanding one business day or less and to take certain capital charger in lieu of collecting margin from certain types of entities or with respect to certain types of accounts. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70245–70248. In addition, as discussed above in section II.A.2.a. of this release, the Commission has proposed margin requirements for nonbank SBSDs and nonbank MSBSPs with respect to non-cleared security-based swaps. *See id.* at 70257–70274. Security-based swap clearing agencies require their clearing members to post margin for proprietary and customer positions of the member cleared by the clearing agency. *See*

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accounts of swap customers and non-customers.[488]

Second, an ANC broker-dealer must provide detail on a schedule to the FOCUS Report Part II CSE about the credit risk charges it takes as part of its capital computation.[489] Specifically, the FOCUS Report Part II CSE schedule requires the ANC broker-dealer to provide detail with respect to the three components of the credit risk charge, namely: (1) The aggregate counterparty exposure charge; (2) the aggregate counterparty concentration charge; and (3) the portfolio concentration charge.[490] Proposed Form SBS would require the same detail about these components of the credit risk charge but require that it be reported in the net capital computation section rather than on a separate schedule.[491] The proposed Form also would require additional detail about the first component of the credit risk charge: the counterparty exposure charge.[492] Under the proposed capital requirements for nonbank SBSDs, a firm authorized to use models would need to calculate a counterparty exposure charge for a commercial end user in the same manner as an ANC broker-dealer.[493] Specifically, the exposure charge for a commercial end user that is insolvent, in a bankruptcy proceeding, or in default of an obligation on its senior debt would be the net replacement value of the security-based swaps with the end user.[494] The counterparty exposure charge for all other commercial end users would be the *credit equivalent amount* of the firm's exposure to the end user multiplied by an applicable credit risk weight factor and then multiplied by 8%.[495] Proposed Form SBS would have line items to enter the aggregate counterparty exposure charge for these two categories of commercial end users (*i.e.,* (1) end users that are insolvent, in a bankruptcy proceeding, or in default of an obligation on their senior debt; and (2) all other end users and to enter the sum of the two categories).[496]

Computation for filers not authorized to use models. The line items in the net capital computation section on proposed Form SBS applicable to filers not authorized to use models are largely the same line items in the computation of net capital section on the FOCUS Report Part II.[497] However, as discussed below, the proposed Form SBS section has additional line items that are not in the Part II section.

First, as discussed above, the computation section applicable to filers authorized to use models includes line items to enter charges with respect to under-margined security-based swap and swap accounts. The computation section applicable to filers not authorized to use models similarly would require detail about the amount of charges relating to under-margined accounts of security-based swap customers and non-customers,[498] and under-margined accounts of swap customers and non-customers.[499]

Second, a broker-dealer that is not authorized to use models is required to enter in the FOCUS Report Part II net capital computation section detail about the dollar amount of the standardized haircuts it takes on various categories of proprietary securities positions.[500] The proposed Form SBS section requires the same detail about standardized haircuts.[501] The section also requires additional entries for the amount of the standardized haircuts applied to security-based swap [502] and swap positions.[503]

Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations, Exchange Act Release No. 67286 (June 28, 2012), 77 FR 41602, 41603 (July 13, 2012). They also may require their clearing members to collect margin from their security-based swap customers. *See id.*

[488] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Authorized to Use Models),* Line 6A4. Derivatives clearing organizations require their clearing members to post margin for proprietary and customer swaps positions of the member cleared by the clearing organization. *See Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations,* 77 FR 41603. They also may require their clearing members to collect margin from their swaps customers. *See id.*

[489] *See* FOCUS Report Part II CSE, *Schedule 1—FINRA Supplementary Capital Information,* Lines 6A–6C. As discussed above in section II.B.3.a. of this release, ANC broker-dealers are permitted to add back to net worth uncollateralized receivables from counterparties arising from OTC derivatives transactions when computing net capital. *See* 17 CFR 240.15c3–1e(c). Instead of the 100% deduction that applies to most unsecured receivables under Rule 15c3–1, ANC broker-dealers are permitted to take the credit risk charge. *See* 17 CFR 240.15c3–1(a)(7); 17 CFR 240.15c3–1e(c).

[490] *See* Part II CSE, *Schedule 1—FINRA Supplementary Capital Information,* Lines 6A–6C.

[491] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Authorized to Use Models),* Lines 15A–15C. As discussed above in section II.B.3.a. of this release, the Commission has proposed that ANC broker-dealers be permitted to add back to net worth uncollateralized receivables and take the corresponding credit risk charge but only with respect to receivables from counterparties that are *commercial end users* as that term would be defined in proposed amendments to Rule 15c3–1 and only with respect to security-based swaps. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70240–70245. In addition, the proposed capital requirements for ANC broker-dealer SBSDs and stand-alone ANC SBSDs similarly would allow these registrants to take credit risk charges with respect to uncollateralized receivables but only from commercial end users arising from security-based swaps. *See id.* Under these proposals, the firms would take a credit risk charge that consists of the three components identified above: (1) A counterparty exposure charge; (2) a concentration charge if the current exposure to a single counterparty exceeds certain thresholds; and (3) a portfolio concentration charge if aggregate current exposure to all counterparties exceeds certain thresholds. *See id.*

[492] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Authorized to Use Models),* Line 15A.

[493] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70240–70245.

[494] *See id.*

[495] *See id.* The *credit equivalent amount* is the sum of the firm's: (1) Maximum potential exposure (''MPE'') to the commercial end user multiplied by a backtesting determined factor; and (2) current exposure to the commercial end user. The MPE amount would be a charge to address potential future exposure and would be calculated using the firm's VaR model as applied to the commercial end user's positions after giving effect to a netting agreement with the end user, taking into account collateral received from the end user, and taking into account the current replacement value of the end user's positions. *See id.* The current exposure amount would be the current replacement value of the commercial end user's positions after giving effect to a netting agreement with the counterparty and taking into account collateral received from the counterparty. *See id.*

[496] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Authorized to Use Models),* Lines 15A, 15A1, and 15A2.

[497] *Compare* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Not Authorized to Use Models), with* the FOCUS Report Part II, *Computation of Net Capital.* The FOCUS Report Part II is used by broker-dealers that have not been approved to use internal models as part of their net capital computation.

[498] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Not Authorized to Use Models),* Line 6A3.

[499] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Not Authorized to Use Models),* Line 6A4.

[500] *See* FOCUS Report Part II, *Computation of Net Capital,* Lines 9A–9E.

[501] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Not Authorized to Use Models),* Lines 9A–9E.

[502] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Not Authorized to Use Models),* Line 10. The proposed capital rules for nonbank SBSDs would prescribe standardized haircuts for security-based swaps. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70231–70237.

[503] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Not Authorized to Use Models),* Line 11. The proposed capital rules for nonbank SBSDs would prescribe standardized haircuts for swaps. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70248–70250.

Computation of Minimum Regulatory Capital Requirements

Proposed Form SBS has two sections for computing minimum required net capital: One for broker-dealer filers (*i.e.,* broker-dealer SBSDs and broker-dealer MSBSPs) and one for stand-alone SBSDs.[504] As discussed above in section II.A.3.a. of this release, Rule 15c3–1, as proposed to be amended, and proposed Rule 18a–1 would prescribe minimum net capital requirements applicable to nonbank SBSDs as the greater of a fixed-dollar amount and a ratio amount.[505] The ratio amount applicable to a broker-dealer SBSD would be the sum of the current ratio amount prescribed in Rule 15c3–1 (the 15-to-1 aggregate indebtedness to net capital ratio or the 2% of aggregate debit items ratio) and an amount equal to the 8% margin factor.[506] The ratio amount applicable to a stand-alone SBSD would be an amount equal solely to the 8% margin factor.[507] Because the minimum net capital requirement computation that would be applicable to a broker-dealer filer differs from the computation that would be applicable to a stand-alone SBSD, proposed Form SBS would contain a separate section for each type of filer. The line items in the minimum net capital requirement section on proposed Form SBS applicable to broker-dealer filers are largely the same line items in the minimum net capital requirement section on the FOCUS Report Part II.[508] The computation section applicable to stand-alone SBSDs is a substantially scaled down version of the parallel FOCUS Report Part II section. As discussed below, both sections on proposed Form SBS have additional line items that are not on the Part II section.

First, both sections require the entry of detail about the amount of excess tentative net capital held by the firm.[509] The proposed capital requirements for nonbank SBSDs prescribe minimum tentative net capital requirements for ANC broker-dealer SBSDs and stand-alone ANC SBSDs.[510] These filers would need to indicate in proposed Form SBS: (1) The amount of tentative net capital they maintain; (2) their minimum tentative net capital requirement; [511] (3) their excess tentative net capital; [512] and (4) the amount of tentative net capital in excess of 120% of their minimum tentative net capital requirement.[513]

Second, both sections would have line items to enter the amount of the 8% margin factor. As discussed above, the minimum net capital requirement for a nonbank SBSD would be the greater of a fixed-dollar amount and a ratio amount. The ratio amount for a broker-dealer SBSD would be the sum of the existing ratio requirement and the 8% margin factor. Consequently, the computation section for broker-dealer filers has line items to enter amounts for (as applicable): (1) The 15-to-1 aggregate indebtedness to net capital ratio; (2) the 2% of aggregate debit items ratio; and (3) the 8% margin factor.[514] The section for stand-alone SBSDs has a line item to enter the 8% margin factor.[515]

Third, a broker-dealer must provide detail in the FOCUS Report Part II CSE section about the dollar amount of net capital in excess of the greater of: (1) 5% of combined aggregate debit items; and (2) 120% of the firm's minimum net capital requirement.[516] The proposed Form SBS sections would require a broker-dealer SBSD, broker-dealer MSBSP, and stand-alone SBSD to enter the amount of net capital in excess of 120% of the minimum net capital requirement.[517]

Statement of Income (Loss)

FINRA has adopted Form SSOI with the Commission's approval ''to magnify the data from the Statement of Income (Loss) page of the FOCUS Report.'' [518]

[504] *See* Part 1 of proposed Form SBS, *Broker-Dealer Computation of Minimum Regulatory Capital Requirements* and *Non-Broker-Dealer Computation of Minimum Regulatory Capital Requirements.* As noted above, broker-dealer MSBSPS—as broker-dealers—would be subject to Rule 15c3–1, and therefore would be subject to a minimum net capital requirement. *See* 17 CFR 140.15c3–1(a). Stand-alone MSBSPs would be subject to a tangible net worth standard pursuant to proposed Rule 18a–2, and therefore would not be subject to a minimum net capital requirement. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257.

[505] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70221–70229.

[506] *See id.*

[507] *See id.* Neither the 15-to-1 aggregate indebtedness to net capital ratio nor the 2% of aggregate debit items ratio would apply to stand-alone SBSDs. *See id.*

[508] *Compare* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Broker-Dealer), with* the FOCUS Report Part II, *Computation of Basic Net Capital Requirement, Computation of Aggregate Indebtedness, Computation of Alternate Net Capital Requirement,* and *Other Ratios.*

[509] *See* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Broker-Dealer),* Lines 1–4; Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer),* Lines 1–4.

[510] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70226–70227. Tentative net capital would be the amount of net capital maintained by the firm before applying standardized haircuts or using internal models to determine deductions on the mark-to-market value of proprietary positions to arrive at the broker-dealer's amount of net capital. *See id.* The minimum tentative net capital requirement is designed to account for the fact that 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 (*i.e.,* positions that show historical correlations) than the standardized haircuts. *See id.*

[511] Under the proposed capital requirements, an ANC broker-dealer SBSD would be required to maintain minimum tentative net capital of $5 billion and a stand-alone ANC SBSD would be required to maintain minimum tentative net capital of $100 million. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70226–70227.

[512] The amount of excess tentative net capital would be the amount that the tentative net capital exceeds the amount of required tentative net capital.

[513] As discussed below in section II.C.2. of the release, Rule 17a–11, as proposed to be amended, and proposed Rule 18a–8 would require an ANC broker-dealer SBSD and a stand-alone ANC SBSD to file a regulatory notice if the firm's tentative net capital falls below 120% of its required minimum tentative net capital.

[514] *See* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Broker-Dealer),* Lines 4A–4C.

[515] *See* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer),* Line 4.

[516] *See* FOCUS Report Part II CSE, *Computation of Net Capital Requirement,* Line 15. As discussed below in section II.C.2. of the release, Rule 17a–11 requires a broker to give notification when its net capital falls below 5% of aggregate debit items and when its net capital falls below 120% of the minimum net capital requirement. *See* 17 CFR 240.17a–11(c)(2)–(3).

[517] *See* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Broker-Dealer),* Line 9A. *See also* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer),* Line 9A. As noted above, Rule 17a–11 requires a broker dealer to give notification when its net capital computation performed pursuant to Rule 15c3–1 shows that its total net capital is less than 120% of the broker-dealer's required minimum net capital. *See* 17 CFR 240.17a–11(c)(3). As discussed below in section II.C.2. of the release, proposed Rule 18a–8 would require a stand-alone SBSD to notify the Commission when its net capital computation shows that its total net capital is less than 120% of the SBSD's required minimum net capital.

[518] Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; *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). (Form SSOI ''is intended to capture more granular detail of a firm's revenue and expense information. The lack of more specific revenue and expense categories for certain business activities on the Statement of Income (Loss) Page has led many firms to report much of their revenue and expenses as 'other' (miscellaneous), a very

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The statement of income (loss) section on proposed Form SBS is modeled on Form SSOI and uses the same line items to report information about categories of revenues and expenses.[519] However, as discussed below, the proposed Form SBS section has additional line items that are not on Form SSOI.

First, a broker-dealer is required to enter into Form SSOI detail about the amount of revenue attributable to fees or commissions with respect to various categories of securities.[520] The statement of income (loss) section on proposed Form SBS would require a nonbank SBSD or nonbank MSBSP to enter the same information.[521] In addition, the section would elicit information about commissions and fees attributable to security-based swaps, mixed swaps, and swaps.[522]

Second, a broker-dealer is required to enter into Form SSOI detail about the amount of revenue attributable to gains or losses on principal trades with respect to various categories of financial instruments, including security-based swaps and swaps.[523] The statement of income (loss) section on proposed Form SBS would require an SBSD or MSBSP to enter the same information, except that it would require additional detail about gains or losses with respect to security-based swaps and swaps.[524] Specifically, the section would require entries for gains and losses with respect to the following categories of security-based swaps: (1) Debt security-based swaps (other than credit default swaps); (2) equity security-based swaps, (3) credit default swaps; and (4) other security-based swaps.[525] It further would require entries for gains and losses with respect to mixed swaps [526] 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.[527]

Third, a broker-dealer is required to enter into the statement of income (loss) section on the FOCUS Report Part II detail about the amount of gains or losses on the firm's securities investment accounts.[528] Specifically, the section requires: (1) The dollar amount of the realized gains or losses; (2) the dollar amount of the unrealized gains or losses; and (3) the total dollar amount of the gains or losses.[529] Form SSOI requires the total dollar amount of gains or losses on firm investments but not the detail on the realized and unrealized gains or losses that must be reported on the FOCUS Report Part II.[530] The statement of income (loss) section on proposed Form SBS would require an SBSD or MSBSP to report the same detail about capital gains and losses on investment accounts as the FOCUS Report Part II.[531]

Computation of Tangible Net Worth

Proposed Rule 18a–2 would require stand-alone MSBSPs to maintain positive tangible net worth.[532] Under proposed Rule 18a–2, *tangible net worth* would be defined to mean the MSBSP's net worth, as determined in accordance with GAAP in the U.S., excluding goodwill and other intangible assets.[533] Part 1 of proposed Form SBS has a computation of tangible net worth section that would need to be completed by an MSBSP.[534] In separate lines, the MSBSP would enter: (1) Total ownership equity; and (2) goodwill and other intangible assets.[535] The difference between those two line items would be entered in a third line to indicate the MSBSP's tangible net worth.[536]

Reserve Account Computation Under Proposed Rule 18a–4

Proposed Rule 18a–4 would require an SBSD, among other things, to maintain a security-based swap customer reserve account at a bank separate from any other bank account of the SBSD.[537] Further, proposed Rule 18a–4 would provide that the SBSD must at all times maintain in the security-based swap customer reserve bank account cash and/or qualified securities in amounts computed daily in accordance with a formula set forth in Exhibit A to proposed Rule 18a–4.[538] The formula in Exhibit A to proposed Rule 18a–4 is modeled closely on the formula in Exhibit A to Rule 15c3–3.[539] Consequently, the steps necessary to compute the reserve account deposit requirement under proposed Rule 18a–4 are, for the most part, the same steps necessary to compute the reserve account deposit requirement under Rule 15c3–3.

Part 1 of proposed Form SBS has a section on which a broker-dealer SBSD or stand-alone SBSD would provide a computation of the deposit requirement for the security-based swap customer reserve account.[540] The section is modeled on the sections in the FOCUS Report Part II and Part II CSE on which broker-dealers provide a computation of the reserve account deposit requirement under Rule 15c3–3.[541] The computation section on proposed Form SBS has two line items that are not on the FOCUS Report Part II CSE or Part II section to account for two additional debit items

general categorization that provides FINRA limited visibility into revenue and expense trends.'') Form SSOI is available at *http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/industry/p125702.pdf.*

[519] *Compare* Part 1 of proposed Form SBS, *Statement of Income (Loss), with* Form SSOI.

[520] *See* FINRA Form SSOI, Lines 1A–1M.

[521] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Lines 1A–1P.

[522] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Lines 1M–1O.

[523] *See* FINRA Form SSOI, Lines 5A–5O.

[524] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Lines 5A–5P.

[525] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Lines 5L1–5L4.

[526] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Line 5M.

[527] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Lines 5N1–5N7.

[528] *See* FOCUS Report Part II Lines 3a–3c.

[529] *See id.*

[530] *See* FINRA Form SSOI, Line 6.

[531] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Lines 6A–6C.

[532] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257.

[533] *See id.*

[534] *See* Part 1 of proposed Form SBS, *Computation of Tangible Net Worth.*

[535] *See* Part 1 of proposed Form SBS, *Computation of Tangible Net Worth,* Lines 1 and 2.

[536] *See* Part 1 of proposed Form SBS, *Computation of Tangible Net Worth,* Line 3.

[537] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70282–70287. As noted above, broker-dealer SBSDs and broker-dealer MSBSPs would be subject to Rule 15c3–3 with respect to customers that are not security-based swap customers and, in the case of a broker-dealer SBSD, Rule 18a–4 with respect to security-based swap customers. Proposed Rule 18a–4 would provide that the SBSD must at all times maintain in the security-based swap customer reserve account cash and/or qualified securities in amounts computed daily in accordance with Exhibit A to proposed Rule 18a–4.

[538] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70282–70287.

[539] *See id.*

[540] *See* Part 1 of proposed Form SBS, *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.* Part 2 of proposed Form SBS has an identical section that a bank SBSD would complete.

[541] *Compare* Part 1 of proposed Form SBS, *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, with* FOCUS Report Part II CSE, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3, and* FOCUS Report Part II, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3.*

that are part of the formula in Appendix A to proposed Rule 18a–4.[542]

Information for Possession or Control Requirements Under Proposed Rule 18a–4

Proposed Rule 18a–4 would require an SBSD to promptly obtain and thereafter maintain physical possession or control of all excess securities collateral carried for the accounts of security-based swap customers.[543] Part 1 of proposed Form SBS has a section on which a broker-dealer SBSD or a stand-alone SBSD would enter information related to the possession or control requirements of Rule 18a–4.[544] The section is modeled on the sections in the FOCUS Report Part II and Part II CSE on which broker-dealers report information related to the possession or control requirements of Rule 15c3–3.[545]

ii. Part 2 of Proposed Form SBS

As discussed above, the proposed reporting requirements for bank SBSDs and bank MSBSPs generally are designed to be tailored specifically to their activities as an SBSD or an MSBSP. However, in order to be able to monitor the financial condition of bank SBSDs and bank MSBSPs, the Commission is proposing a limited program of reporting certain general financial information by these registrants, which is based on the reporting requirements of the prudential regulators. Specifically, banks are required to file quarterly reports on FFIEC Form 031.[546] Like the FOCUS Report, FFIEC Form 031 elicits financial and operational information about a bank, which is entered into uniquely numbered line items. Part 2 of proposed Form SBS would require a bank SBSD or a bank MSBSP to report certain of the information reported on FFIEC Form 031.[547] Specifically, Part 2 has: (1) A balance sheet section that largely mirrors Schedule RC to FFIEC Form 031; (2) a statement of 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. Line items on proposed Form SBS that correspond to line items on FFIEC Form 031 would require the entry of the same type of information.[548]

Part 2 of proposed Form SBS also has sections for: (1) A reserve account computation under proposed Rule 18a–4; and (2) information for possession or control requirements under proposed Rule 18a–4. The sections of Part 2 are discussed below.

Balance Sheet

A bank must report detail about its assets, liabilities, and equity capital on Schedule RC to FFIEC Form 031.[549] Schedule RC also has a ''Memoranda'' section that elicits information about the bank's external auditors and fiscal year end date.[550] Bank SBSDs and bank MSBSPs would be required to report detail about their assets, liabilities, and equity capital on a balance sheet section on Part 2 of proposed Form SBS.[551] The balance sheet section would have the same line items as Schedule RC to FFIEC Form 031, except it would not include line items from the ''Memoranda'' section.[552] Consequently, bank SBSDs and bank MSBSPs would be required to report in proposed Form SBS the same information about assets, liabilities, and equity capital that they report in Schedule RC (excluding the Memoranda information).

Regulatory Capital

A bank must report detail about its regulatory capital on Schedule RC–R to FFIEC Form 031.[553] Schedule RC–R also has a ''Memoranda'' section that elicits detail about derivatives.[554] The information elicited on Schedule RC–R is designed to facilitate an analysis of the bank's regulatory capital. As discussed above in section II.A.1. of this release, the prudential regulators are responsible for administering capital requirements for bank SBSDs and bank MSBSPs.[555] The prudential regulators have proposed capital rules that would require a bank SBSD or bank MSBSP to comply with the capital rules applicable to banks.[556]

Bank SBSDs and bank MSBSPs would be required to report detail about their regulatory capital on a section on Part 2 of proposed Form SBS.[557] The regulatory capital section would include certain—but not all—of the line items on Schedule RC–R.[558] The included line items require a bank to enter total amounts of the components of bank regulatory capital (*e.g.,* total Tier 1, Tier 2, or Tier 3 capital) and other summary

[542] *See* Part 1 of proposed Form SBS, *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,* Lines 17 and 18. The line items on these lines require the entry of the amount of margin required and on deposit related to cleared and non-cleared security-based swaps. *See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70282–70287.

[543] Under proposed Rule 18a–4, the term *excess securities collateral* would be defined to mean securities and money market instruments carried for the account of a security-based swap customer that have a market value in excess of the current exposure of the SBSD to the customer, excluding, under certain specified conditions, securities or money market instruments used to meet a margin requirement of a registered security-based swap clearing agency or of another SBSD. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70279. The term *security-based swap customer* would be defined to mean any person from whom or on whose behalf the SBSD has received or acquired or holds funds or other property for the account of the person with respect to a cleared or non-cleared security-based swap transaction. *See id.* at 70278. The definition would exclude a person to the extent that person has a claim for funds or other property which by contract, agreement or understanding, or by operation of law, is part of the capital of the SBSD or is subordinated to all claims of security-based swap customers of the SBSD. *See id.*

[544] *See* Part 1 of proposed Form SBS, *Information for Possession or Control Requirements under Rule 18a–4.* Part 2 of proposed Form SBS has an identical section that a bank SBSD would complete.

[545] *Compare* Part 1 of proposed Form SBS, *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, with* FOCUS Report Part II CSE, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3, and* FOCUS Report Part II, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3.*

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

[547] Obtaining a bank's FFIEC Form 031 information through Form SBS will allow Commission staff to easily and efficiently retrieve and transfer the information into a database where values can be compared over time and with other firms. For example, broker-dealers submit FOCUS Reports electronically to FINRA through a user-interactive portal known as ''eFOCUS.'' This allows FINRA and Commission staff to easily and efficiently retrieve firm-specific data as well as aggregate data across firms.

[548] The identifying number of each Line Item on proposed Form SBS shares the same first four characters as the corresponding Line Item on FFIEC Form 031. However, the Form SBS line items end with an additional ''b'' character. For example, Line Item 0081 on FFIEC Form 031 is Line Item 0081b on proposed Form SBS. The additional ''b'' accounts for the fact that some of the line items on FFIEC Form 031 have the same unique numbers as line items on the FOCUS Report.

[549] *See* FFIEC Form 031, Schedule RC, *Balance Sheet,* Lines 1–29.

[550] *See* FFIEC Form 031, Schedule RC, *Balance Sheet,* Memoranda, Lines 1–2.

[551] *See* Part 2 of proposed Form SBS, *Balance Sheet (Information As Reported On FFIEC Form 031—Schedule RC),* Lines 1–29.

[552] *Compare* Part 2 of proposed Form SBS, *Balance Sheet (Information As Reported On FFIEC Form 031—Schedule RC),* Lines 1–29, *with* FFIEC Form 031, Schedule RC, *Balance Sheet,* Lines 1–29.

[553] *See* FFIEC Form 031, Schedule RC–R, *Regulatory Capital,* Lines 1–62.

[554] *See* FFIEC Form 031, Schedule RC–R, *Regulatory Capital,* Memoranda, Lines 1–2.

[555] *See* 15 U.S.C. 78o–10(e)(2).

[556] *See Margin and Capital Requirements for Covered Swap Entities,* 76 FR 27564.

[557] *See* Part 2 of Proposed Form SBS, *Regulatory Capital (Information As Reported On FFIEC Form 031—Schedule RC–R),* Lines 1–10.

[558] *See* Line Items 3210, 8274, 5311, 1395, 3792, A223, L138, 7204, 7206, 7205, 7273, 7274, and 7275 of FFIEC Form 031 and proposed Form SBS.

measures. The objective is to require high level reporting of key elements of the regulatory capital of a bank SBSD or bank MSBSP to obtain a profile of the firm's regulatory capital position. Thus, the information elicited in Part 2 of proposed Form SBS would not involve the level of detail required by the prudential regulators on Schedule RC–R.

Income Statement

A bank must report detail about its income (loss) and expenses on Schedule RI to FFIEC Form 031.[559] Schedule RI also has a ''Memoranda'' section that elicits further detail about income (loss).[560] Bank SBSDs and bank MSBSPs would be required to report detail about their income (loss) and expenses on an income section on Part 2 of proposed Form SBS.[561] However, the level of detail would be significantly less than is required in Schedule RI. Specifically, to focus the reporting on summary information and information relevant to securities and derivatives activities, the income section only includes line items from Schedule RI that require the entry of: (1) Total amounts for categories of income, expense, and loss; [562] (2) detail about gains and losses on securities positions; [563] (3) detail about trading revenues; [564] and (4) detail about gains and losses on derivatives.[565]

Reserve Account Computation Under Proposed Rule 18a–4

As discussed above, Part 1 of proposed Form SBS has a section on which a broker-dealer SBSD or stand-alone SBSD would provide a computation of the deposit requirement for the security-based swap customer reserve account.[566] This section is modeled on the sections of the FOCUS Report Part II and Part II CSE on which broker-dealers provide a computation of the customer reserve account deposit requirement under Rule 15c3–3.[567] Part 2 of proposed Form SBS has an identical section that would be completed by a bank SBSD.[568]

Information for Possession or Control Requirements Under Proposed Rule 18a–4

As discussed above, Part 1 of proposed Form SBS has a section on which a broker-dealer SBSD or a stand-alone SBSD would enter information related to the possession or control requirements of Rule 18a–4.[569] The section is modeled on the sections of the FOCUS Report Part II and Part II CSE on which broker-dealers provide information related to the possession or control requirements of Rule 15c3–3.[570] Part 2 of proposed Form SBS has an identical section that would be completed by a bank SBSD.[571]

iii. Part 3 of Proposed Form SBS

FCMs are required to periodically file with the CFTC and their designated SRO Form 1–FR–FCM.[572] Like the FOCUS Report and FFIEC Form 031, Form 1–FR–FCM elicits financial and operational information about an FCM, which is entered into uniquely numbered line items. To account for ANC broker-dealers that are dually registered as FCMs, the FOCUS Report Part II CSE incorporates, substantially in the same format, the following from Form 1–FR FCM: [573] (1) A section to show a statement of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges; [574] (2) a section to show a statement of segregation requirements and funds in segregation for customers' dealer options account; [575] (3) a section to show a summary statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers pursuant to CFTC Regulation 30.7; [576] (4) a section to show a

[559] *See* FFIEC Form 031, Schedule RI, *Income Statement,* Lines 1–14.

[560] *See* FFIEC Form 031, Schedule RI, *Income Statement,* Memoranda, Lines 1–14.

[561] *See* Part 2 of Proposed Form SBS, *Income Statement (Information As Reported On FFIEC Form 031—Schedule RI),* Lines 1–11.

[562] *See* Line Items 4107, 4073, 4079, 4093, 4301, and 4340 of FFIEC Form 031 and proposed Form SBS.

[563] *See* Line Items 3521 and 3196 of FFIEC Form 031 and proposed Form SBS.

[564] *See* Line Items 8757, 8758, 8759, 8760, F186, K090, and K094 of FFIEC Form 031 and proposed Form SBS.

[565] *See* Line Items C889, C890, and A251 of FFIEC Form 031 and proposed Form SBS.

[566] *See* Part 1 of proposed Form SBS, *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.*

[567] *Compare* Part 1 of proposed Form SBS, *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, with* the FOCUS Report Part II CSE, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3* and the FOCUS Report Part II, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3.*

[568] *See* Part 1 of proposed Form SBS, *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.*

[569] *See* Part 1 of proposed Form SBS, *Information for Possession or Control Requirements under Rule 18a–4.*

[570] *Compare* Part 1 of proposed Form SBS, *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, with* the FOCUS Report Part II CSE, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3* and the FOCUS Report Part II, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3.*

[571] *See* Part 2 of proposed Form SBS, *Information for Possession or Control Requirements under Rule 18a–4.*

[572] *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.*

[573] The FOCUS Report Part II CSE assigns different numbers to the line items.

[574] *See* FOCUS Report Part II CSE, *Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges,* Lines 1–14. Section 4d of the CEA requires each FCM to segregate from its own assets all money, securities and other property deposited by futures customers to margin, secure, or guarantee futures contracts and options on futures contracts traded on designated contract markets. It further requires an FCM to treat and deal with futures customer funds as belonging to the futures customer, and prohibits an FCM from using the funds deposited by the futures customer to margin or extend credit to any person other than the futures customer that deposited the funds. 7 U.S.C. 6d. The CFTC has adopted Rules 1.20 through 1.30 to implement section 4d. *See* 17 CFR 1.20 through 1.30. The *Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges* generally indicates the total amount of funds held by the FCM in segregated accounts, the total amount of funds that the FCM must hold in segregated accounts to meet its regulatory obligations to futures customers, and whether the firm holds excess segregated funds in the segregated accounts as of the reporting date.

[575] *See* FOCUS Report Part II CSE, *Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts,* Lines 1–3. Rule 1.32 requires an FCM to prepare a daily computation which shows: (1) The amount of funds that an FCM is required to segregate for customers who are trading on U.S. commodity exchanges pursuant to the CEA and CFTC rules; (2) the amount of funds the FCM actually has in segregated accounts; and (3) the amount, if any, of the FCM's residual interest in the customer funds segregated. *See* 17 CFR 1.32.

[576] *See* FOCUS Report Part II CSE, *Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to Commission Regulation 30.7, Foreign Futures and Foreign Options Secured Amount: Summary,* Lines I–II, 1–3. Section 4(b) of the CEA provides that the CFTC may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of reports, the keeping of books and records, the safeguarding of the funds deposited by persons for trading on foreign markets, and registration with the CFTC by any person located in the U.S. who engages in the offer or sale of any contract of sale of a commodity for future delivery that is made subject to the rules of a board of trade located outside of the U.S. *See* 7 U.S.C. 6. Pursuant to section 4(b), the CFTC adopted Part 30 of its regulations to address foreign futures and foreign option transactions. *See* 17 CFR 30.1 through 30.13. Rule 30.7 provides that an FCM may deposit the funds belonging to foreign futures or foreign options customer in an account or accounts maintained at a bank or trust company located in the U.S., a bank or trust company located outside the U.S. that has in excess of $1 billion of regulatory capital, an FCM registered with the CFTC, a derivatives clearing organization, a member of a foreign board of trade, a foreign clearing organization, or a depository selected by the member of a foreign board of trade or foreign clearing organization. *See* 17 CFR 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;[577] and (5) a section to show a computation of the firm's minimum capital requirement.[578] An ANC broker-dealer dually registered as an FCM can file the FOCUS Report Part II CSE rather than Form 1–FR–FCM.[579]

The CFTC recently adopted amendments to Form 1–FR–FCM that change the format of the sections identified in items (1), (3), and (4) above to enhance customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for FCMs.[580] The format of these sections in proposed Form SBS are substantively the same as the format of these recently amended sections of Form 1–FR–FCM.[581]

In addition, the CFTC adopted a new section for Form 1–FR–FCM that requires an FCM to provide detail about segregation requirements and funds in cleared swap customer accounts.[582] This new section is comparable to the section on which an FCM provides a *Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges.*[583] The purpose of the new section is to provide an FCM that carries accounts for customers that maintain cleared swap positions with a means to document and to demonstrate its compliance with its obligation to treat, and deal with all money, securities, and property of any swap customer received to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to swap customers as the result of such a swap) as belonging to the FCM's swap customers as required by section 4d of the CEA.[584]

Consistent with the CFTC's recent amendment, proposed Form SBS would include a section requiring an FCM filer to report detail about segregation requirements and funds in cleared swap customer accounts.[585] The format of the section mirrors the format of the section adopted by the CFTC to be included on Form 1–FR–FCM.

iv. Part 4 of Proposed Form SBS

Part 4 of proposed Form SBS would apply to nonbank SBSDs and nonbank MSBSPs. Part 4 consists of four schedules that elicit detailed information about a firm's security-based swap and swap positions, counterparties, and exposures. As discussed below, certain of the schedules are modeled on schedules to the FOCUS Report.

The schedules in Part 4 of proposed Form SBS would require filers to report information relating to their exposures resulting from over-the-counter derivatives exposures (including exposures relating to security-based swaps and swaps). The instructions to proposed Form SBS would define terms that are used to indicate the type of information to be entered about the exposures. Specifically, the terms are: (1) *Gross replacement value* also referred to as *gross replacement value—receivable;*[586] (2) *gross replacement value—payable;*[587] (3) *net replacement value;*[588] (4) *current net exposure;*[589]

[577] *See* FOCUS Report Part II CSE, *Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to Commission Regulation 30.7, Funds Deposited In Separate 17 CFR § 30.7 Accounts,* Lines 1–8. This statement generally indicates the total amount of funds held by the FCM in secured accounts, the total amount of funds that the FCM must hold in secured accounts to meet its regulatory obligations to foreign futures or foreign options customers, and whether the firm holds excess secured funds in the secured accounts as of the reporting date.

[578] *See* FOCUS Report Part II CSE, *Computation of CFTC Minimum Net Capital Requirement,* Lines A–C. A broker-dealer dually registered as an FCM is required to maintain net capital in an amount at least equal to the greater of: (1) The minimum amount required of a broker-dealer under Rule 15c3–1; and (2) the minimum amount required of an FCM under CFTC Rule 1.17. *See* 17 CFR 1.17; 17 CFR 240.15c3–1.

[579] *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). *See also* instructions to Form 1–FR–FCM, *available at http://www.cftc.gov/ucm/groups/public/@iointermediaries/documents/file/1fr-fcminstructions.pdf*; *Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,* 78 FR 68506, 68513 (Nov. 14, 2013).

[580] *See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,* 78 FR 68512.

[581] One of the objectives of including the Form 1–FR–FCM sections in proposed Form SBS is to permit a filer that is dually registered as an FCM to be able to use proposed Form SBS to comply with reporting requirements of the CFTC, subject to approval by the CFTC. This objective could be defeated if the format of the sections on proposed Form SBS is substantively different than the format of the sections on Form 1–FR–FCM. *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).

[582] *See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,* 78 FR 68514.

[583] *See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,* 78 FR 68513.

[584] *See id.* at 68507. *See also* 7 U.S.C. 6d.

[585] *See* Part 3 of proposed Form SBS, *Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4D(F) of the Commodity Exchange Act,* Lines 1–16.

[586] The instructions to proposed Form SBS would define the terms *gross replacement value* and *gross replacement value—receivable* 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. *See* the *Definitions* section of the instructions to proposed Form SBS. Applicable netting and collateral rules would include Appendix E to Rule 15c3–1 that prescribes, and proposed Rule 18a–1 that would prescribe, requirements for when netting agreements and collateral can be taken into account for purposes of calculating credit risk charges as part of computing net capital. *See* 17 CFR 240.15c3–1e(c)(4)(iv) and (v); *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70240–70245. In addition, proposed Rule 18a–3 would prescribe when netting agreements and collateral can be taken into account for purposes calculating margin requirements for non-cleared security-based swaps. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70260–70265. The CFTC also has requirements for netting agreements and collateral for the purposes of the proposed capital requirements for swap dealers and major swap participants. *See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,* 78 FR 68506. Similarly, the prudential regulators have proposed requirements for netting agreements and collateral for the purposes of their proposed capital and margin requirements for bank SBSDs, bank MSBSPs, bank swap dealers, and bank major swap participants. *See Margin and Capital Requirements for Covered Swap Entities,* 76 FR 27564.

[587] The instructions to proposed Form SBS would define the term *gross replacement value—payable* 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. *See* the *Definitions* section of the instructions to proposed Form SBS.

[588] The instructions to proposed Form SBS would define the term *net replacement value* 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. *See* the *Definitions* section of the instructions to proposed Form SBS.

[589] The instructions to proposed Form SBS would define the term *current net exposure* 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). *See* the *Definitions* section of the instructions to proposed Form SBS.

(5) *total exposure;*[590] and (6) *margin collected.*[591]

Schedule 1

ANC broker-dealers are required to complete a schedule on the FOCUS Report Part II CSE to report the dollar amount of the aggregate long and short positions in various categories of financial instruments held by the firm.[592] The categories include, for example, U.S. treasury securities, foreign debt securities, foreign equity securities, and corporate obligations. The schedule has a single line for derivatives.[593] Schedule 1 to Part 4 of proposed Form SBS has a subsection that elicits the dollar amount of the aggregate long and short positions in the same categories of non-derivative financial instruments as the FOCUS Report Part II CSE section.[594]

Schedule 1 elicits more detail about security-based swap, mixed swap, and swap positions than the parallel FOCUS Report Part II CSE section.[595] Specifically, it would require the filer 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.[596] It further would require the same information with respect to mixed swaps [597] 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.[598] The instructions to proposed Form SBS would direct firms to report the month-end gross replacement value for cleared and non-cleared receivables in the long column, and report the month-end gross replacement value for cleared and non-cleared receivables in the short column.[599]

Schedule 2

ANC broker-dealers are required to provide detail on Schedule III to the FOCUS Report Part II CSE about the fifteen counterparties to which they have the largest credit exposures in derivatives.[600] The FOCUS Report Part II CSE specifies that an ANC broker-dealer must provide for each of the fifteen counterparties: (1) A counterparty identifier; (2) the counterparty's country; (3) the counterparty's industry segment; (4) the counterparty's credit rating; (5) the gross replacement value of the receivables from and payables to the counterparty; (6) the net replacement value of the transactions with the counterparty; (7) the current net exposure to the counterparty; (8) the total credit exposure to the counterparty; and (9) the aggregate maximum potential exposure to the counterparty.[601] It also requires total amounts for items (5) through (9) above (*i.e.,* the sum of the amounts for the fifteen counterparties).[602]

Schedule 2 to Part 4 of proposed Form SBS has two tables that are modeled on Schedule III to the FOCUS Report Part II CSE.[603] The first table would require a nonbank SBSD or a nonbank MSBSP to identify in the first column the fifteen counterparties to which the firm has the largest current net exposure in the order from the largest to the smallest current net exposure.[604] The second table would require the filer to identify in the first column the fifteen counterparties to which the firm as the largest total exposure in the order from the largest to the smallest total exposure.[605] For each counterparty, the filer would need to enter into the tables the following information: (1) The counterparty's unique identifier; (2) the counterparty's internal credit rating assigned by the SBSD or MSBSP; (3) the amount of the gross replacement value—receivables from the counterparty (gross gain); (4) the amount of the gross replacement value—payables to the counterparty (gross gain); (5) the amount of the net replacement value of the derivatives positions with the counterparty; (6) the current net exposure to the counterparty; (7) the total exposure to the counterparty; and (8) the margin collected from the counterparty.[606] For items (3) through (8) above, the filer also would be required to provide the aggregate amounts for all counterparties

[590] The instructions to proposed Form SBS would define the term *total exposure* as the sum of the following (as applicable): (1) The current net exposure; (2) 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); (3) the *margin amount* for uncleared security-based swaps calculated under paragraph (c) of proposed Rule 18a–3; (4) the initial margin for non-cleared swaps calculated under the CFTC's rules (regardless of whether the margin has been collected); and (5) *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. *See* the *Definitions* section of the instructions to proposed Form SBS.

[591] The instructions to proposed Form SBS would define the term *margin collected* as the amount of initial margin collateral collected that can be applied against the firm's total exposure under applicable rules. *See* the *Definitions* section of the instructions to proposed Form SBS.

[592] *See* FOCUS Report Part II CSE, *Aggregate Securities and OTC Derivatives Positions,* Lines 1–15. OTC derivatives dealers are required to provide similar information in a section on the FOCUS Report Part IIB. *See* FOCUS Report Part IIB, Schedule VI, *Aggregate Securities and Commodities Positions,* Lines 1–15.

[593] *See* FOCUS Report Part II CSE, *Aggregate Securities and OTC Derivatives Positions,* Line 11.

[594] *See* Part 4 of proposed Form SBS, Schedule 1, *Aggregate Securities, Commodities, and Swaps Positions,* Lines 1–18.

[595] In addition to the differences discussed below, for increased clarity, Line 2 of the proposed Form SBS schedule would read ''U.S. government agency and U.S. government-sponsored enterprises'' instead of ''U.S. government agency and government-sponsored entities''. *Compare* FOCUS Report Part II CSE, *Aggregate Securities and OTC Derivatives Positions,* Line 2 *with* Part 4 of proposed Form SBS, Schedule 1, *Aggregate Securities, Commodities, and Swaps Positions,* Line 2. Moreover, the proposed Form SBS schedule would elicit detail with respect to two categories of U.S. government agency securities and U.S. government sponsored enterprise securities: debt securities and mortgage-backed securities. Finally, for increased clarity, Line 17 would read ''Securities with no ready market'' instead of ''Investments with no ready market''. *Compare* FOCUS Report Part II CSE, *Aggregate Securities and OTC Derivatives Positions,* Line 13 *with* Part 4 of proposed Form SBS, Schedule 1, *Aggregate Securities, Commodities, and Swaps Positions,* Line 17. *See also* Letter from Howard Spindel, Senior Managing Director, and Cassondra E. Joseph, Managing Director, Integrated Management Solutions USA LLC to FINRA (Feb. 25, 2013), *available at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p213401.pdf* (suggesting such a modification).

[596] *See* Part 4 of proposed Form SBS, Schedule 1, *Aggregate Securities, Commodities, and Swaps Positions,* Lines 12A–12D.

[597] *See* Part 4 of proposed Form SBS, Schedule 1, *Aggregate Securities, Commodities, and Swaps Positions,* Line 13.

[598] *See* Part 4 of proposed Form SBS, Schedule 1, *Aggregate Securities, Commodities, and Swaps Positions,* Lines 14A–14G.

[599] *See* instructions to proposed Form SBS for Part 4, Schedule 1.

[600] *See* FOCUS Report Part II CSE, Schedule III, *Credit-Concentration Report for Fifteen Largest Net Exposures in Derivatives.* OTC derivatives dealers are required to provide similar information in a section on the FOCUS Report Part IIB. *See* FOCUS Report Part IIB, Schedule I, *Credit-Concentration Report for Twenty Largest Current Net Exposures.*

[601] *See* FOCUS Report Part II CSE, Schedule III, *Credit-Concentration Report for Fifteen Largest Net Exposures in Derivatives.*

[602] *See* FOCUS Report Part II CSE Line Items 7810, 7811, 7812, 7813, 7814, and 7815.

[603] *Compare* Part 4 of proposed Form SBS, Schedule 2, *Credit Concentration Report for Fifteen Largest Exposures in Derivatives, with* FOCUS Report Part II CSE, Schedule III, *Credit-Concentration Report for Fifteen Largest Net Exposures in Derivatives.*

[604] *See* Part 4 of proposed Form SBS, Schedule 2, *Credit Concentration Report for Fifteen Largest Exposures in Derivatives,* Table I.

[605] *See* Part 4 of proposed Form SBS, Schedule 2, *Credit Concentration Report for Fifteen Largest Exposures in Derivatives,* Table II.

[606] *See* Part 4 of proposed Form SBS, Schedule 2, *Credit Concentration Report for Fifteen Largest Exposures in Derivatives,* Tables I and II. The Commission is proposing to add a line item to elicit the amount of margin collected from the counterparty in order to provide a means to monitor how much of the exposure to the counterparty is collateralized thereby mitigating the risk to the firm of the counterparty's default.

other than the fifteen specifically reported counterparties.

Schedule 3

ANC broker-dealers are required to provide detail on a table on Schedule IV to the FOCUS Report Part II CSE about their aggregate credit exposures to counterparties grouped by the internal credit rating assigned by the ANC broker-dealer to the counterparty.[607] Specifically, for each notch in the ANC broker-dealer's rating scale, the firm must provide the following information aggregated across all counterparties rated at that notch: (1) The current net exposure to the counterparties; (2) the net replacement value of the transactions with the counterparties; (3) the gross replacement value of the receivables from and payables to the counterparties; and (4) the aggregate maximum potential exposure to the counterparties.[608] It also requires total amounts for these items.[609]

Schedule 3 to Part 4 of proposed Form SBS has a table that is modeled on Schedule IV to the FOCUS Report Part II CSE.[610] This table would require the filer to set forth its internal credit rating scale in the left hand column.[611] For each notch in the rating scale, the filer would need to provide: (1) The amount of the gross replacement value—receivables from the counterparties rated at that notch; (2) the amount of the gross replacement value—payables to the counterparties rated at that notch; (3) the amount of the net replacement value of the derivatives positions with the counterparties rated at that notch; (4) the current net exposure to the counterparties rated at that notch; (5) the total exposure to the counterparties rated at that notch; and (6) the margin collected from the counterparties rated at that notch.[612]

Schedule 4

ANC broker-dealers are required to provide detail on a table on Schedule II to the FOCUS Report Part II CSE about their OTC derivatives exposures grouped by country.[613] Specifically, for each country, the firm must provide the following information aggregated across all counterparties located in that country and grouped by credit rating category: (1) The current net exposure to the counterparties; (2) the net replacement value of the transactions with the counterparties; and (3) the gross replacement value of the receivables from and payables to the counterparties.[614] It also requires total amounts for these items.[615]

Schedule 4 to Part 4 of proposed Form SBS has two tables that are modeled on Schedule II to the FOCUS Report Part II CSE.[616] 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 the order from the largest to the smallest current net exposure amounts.[617] The second table would require the filer to identify in the left column the ten largest countries in terms of the filer's aggregate total exposure to counterparties located in the country in the order from the largest to the smallest total exposure amounts.[618] For each country, the filer would need to enter into the tables the following information: (1) The amount of the gross replacement value—receivables from the counterparties located in the country; (2) the amount of the gross replacement value—payables to counterparties located in the country; (3) the amount of the net replacement value of the derivatives positions with the counterparties located in the country; (4) the current net exposure to counterparties located in the country; (5) the total exposure to counterparties located in the country; and (6) the amount of margin collected from counterparties located in the country.[619]

v. Part 5 of Proposed Form SBS

Part 5 of proposed Form SBS would apply to bank SBSDs and bank MSBSPs. Part 5 consists of one schedule that is a truncated version of Schedule 1 to Part 4 of proposed Form SBS.[620] Specifically, Schedule 1 to Part 5 only would elicit detail about the filer's security-based swap, mixed-swap, and swap positions. In particular, Schedule 1 to Part 5 would require the filer to report the aggregate long and short positions for the following categories of cleared and non-cleared security-based swaps: (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.[621] It further would require the same information with respect to mixed swaps[622] 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.[623]

Request for Comment

The Commission generally requests comment on proposed Form SBS. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. As proposed, a broker-dealer that is not dually registered as an SBSD or MSBSP would continue to file Part IIA, Part IIB, or Part II CSE of the FOCUS Report, as applicable, whereas SBSDs and MSBSPs (including broker-dealer SBSDs and broker-dealer MSBSPs)

[607] *See* FOCUS Report Part II CSE, Schedule IV, *Portfolio Summary of OTC Derivatives Exposures by Internal Credit Rating.*

[608] *See id.*

[609] *See* FOCUS Report Part II CSE Line Items 7820, 7821, 7822, 7823, and 7824.

[610] *See* Part 4 of proposed Form SBS, Schedule 3, *Portfolio Summary of OTC Derivatives Exposures by Internal Credit Rating.*

[611] The instructions to proposed Form SBS would provide that each category and notches within a category would constitute a ''notch'' in the rating scale. For example, the following symbols would each represent a notch in the 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.

[612] *See* Part 4 of proposed Form SBS, Schedule 3, *Portfolio Summary of OTC Derivatives Exposures by Internal Credit Rating.* As noted above, the line item added to the schedule to elicit the amount of margin collected from the counterparties is intended to have a means to monitor how much of the exposure to the counterparties is collateralized thereby mitigating the risk to the firm of a counterparty's default.

[613] *See* FOCUS Report Part II CSE, Schedule II, *Geographic Distribution of OTC Derivatives Exposures for Ten Largest Countries.* OTC derivatives dealers are required to provide similar information in a section on the FOCUS Report Part IIB. *See* FOCUS Report Part IIB, Schedule III, *Geographic Distribution of OTC Derivatives Exposures.*

[614] *See id.*

[615] *See* FOCUS Report Part II CSE Line Items 7901, 7902, 7903, and 7904.

[616] *See* Part 4 of proposed Form SBS, Schedule 4, *Geographic Distribution of OTC Derivatives Exposures for Ten Largest Countries.*

[617] *See* Part 4 of proposed Form SBS, Schedule 4, *Geographic Distribution of OTC Derivatives Exposures for Ten Largest Countries,* Table I.

[618] *See* Part 4 of proposed Form SBS, Schedule 4, *Geographic Distribution of OTC Derivatives Exposures for Ten Largest Countries,* Table II.

[619] *See* Part 4 of proposed Form SBS, Schedule 4, *Geographic Distribution of OTC Derivatives Exposures for Ten Largest Countries,* Tables I and II. Requiring nonbank SBSDs and nonbank MSBSPs to report their derivatives exposures by country allows Commission staff to monitor firms with concentrated exposures to a particular country, which can present risk if a localized event occurs (*e.g.,* a sovereign downgrade). As noted above, the line item added to the schedule to elicit the amount of margin collected from the counterparties is intended to provide a means to monitor how much of the exposure to the counterparties is collateralized thereby mitigating the risk to the firm of a counterparty's default.

[620] *See* Part 5 of proposed Form SBS, Schedule 1, *Aggregate Security-Based Swap and Swaps Positions.*

[621] *See* Part 5 of proposed Form SBS, Schedule 1, *Aggregate Security-Based Swap and Swaps Positions,* Lines 1A–1D.

[622] *See* Part 5 of proposed Form SBS, Schedule 1, *Aggregate Security-Based Swap and Swaps Positions,* Line 2.

[623] *See* Part 5 of proposed Form SBS, Schedule 1, *Aggregate Security-Based Swap and Swaps Positions,* Lines 3A–3G.

would file Form SBS. As an alternative, all broker-dealers, SBSDs, and MSBSPs could be required to file the same consolidated form—Form SBS, which could be re-titled the ''FOCUS Report Part II'' or some similar name. Under this alternative, broker-dealers not dually registered as an SBSD or MSBSP (''stand-alone broker-dealers'') would complete Parts 1 and 4 of Form SBS (and would also complete Part 3 if they are dually registered as an FCM). Should all broker-dealers, SBSDs, and MSBSPs file the same consolidated form? Explain why or why not, and quantify any estimated burdens associated with this alternative.

2. Does proposed Form SBS elicit the appropriate information for the various types of registrants that would be required to complete and file the form (*e.g.,* stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, bank MSBSPs, broker-dealer SBSDs, and broker-dealer MSPSPs)? If not, how should proposed Form SBS be modified to address the information elicited from particular registrant(s)?

3. If stand-alone SBSDs and stand-alone MSBSPs are required to file Form SBS with the Commission (instead of with the Commission's designee), should the Commission require these firms to file Form SBS electronically? Explain why or why not. If Form SBS should be filed electronically, should it be filed using the Commission's EDGAR system, as an Excel spreadsheet, as a delimiter separated value (DSV) file, and/or using some other electronic format?

4. Are there any line items in proposed Form SBS that require further clarification or instruction? If so, identify the applicable line items and explain the needed clarification or instruction.

5. Proposed Form SBS consists of five parts. An SBSD or MSBSP would need to complete: (1) Parts 1 and 4 of Form SBS if it is a stand-alone SBSD, broker-dealer SBSD, stand-alone MSBSP, or broker-dealer MSBSP; or (2) Parts 2 and 5 of Form SBS if it is a bank SBSD or bank MSBSP. Should Parts 1 and 4 be consolidated into a single part? Should Parts 2 and 5 be consolidated into a single part? Explain why or why not.

6. Proposed Form SBS would include line items that are not on the FOCUS Report or CFTC Form 1–FR–FCM. Is it inappropriate to include any of these new line items on Form SBS? If so, identify the line item and explain why it would not be appropriate to include it. Should any new line items that are not currently included in proposed Form SBS be added? If so, describe the new line item and where it should be included on the form, provide accompanying instructions, and explain why it should be included.

7. Are there any line items that should not be included on proposed Form SBS because they are no longer relevant to broker-dealer activities or would not be relevant to SBSD or MSBSP activities? For example, are Line Items 150, 160, and 190 relevant to broker-dealer activities? Similarly, is Note B to the Financial and Operational Data section widely used? Explain why or why not. If a line item is not relevant to broker-dealer activities, should the Commission remove it from the FOCUS Report? Explain why or why not.

8. Should the Commission rely on the public call reports completed by bank SBSDs and bank MSBSPs to gather the information necessary to monitor the transactions, positions and financial condition of the bank SBSDs and bank MSBSPs, instead of requiring such firms to complete and file with the Commission Parts 2 and 5 of Form SBS? If so, explain why.

9. The instructions for proposed Form SBS define ''total exposure'' as the sum of several amounts, including ''[t]he 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).'' Should the definition of ''total exposure'' instead include the capital charge that would apply to the positions under Rule 15c3–1 or proposed Rule 18a–1, as applicable? Explain why or why not.

10. According to the proposed instructions for proposed Form SBS, firms should report on Line Item 120 the market value of encumbered securities that the firm transferred to a creditor and that the creditor has the right to sell or re-pledge. Should this instruction instead direct firms to report any encumbered security, whether or not the creditor has the right to sell or re-pledge the collateral? If this instruction should be changed, should the instructions for the FOCUS Report relating to the corresponding line item also be changed? Explain why or why not.

11. With respect to Line Items 190, 650, 660, and 900 of proposed Form SBS, do broker-dealers continue to own exchange memberships as assets? If so, are their values, relative to the rest of a broker-dealer's assets, significant enough to continue collecting this information as a separate line item? Explain why or why not.

12. Should broker-dealer MSBSPs be required to complete the section entitled ''Computation of Tangible Net Worth'' in addition to the sections relating to the computation of net capital and minimum net capital requirement? Explain why or why not.

13. Schedule 1 of Part 4 and Schedule 1 of Part 5 of proposed Form SBS request information about four categories of security-based swaps: (1) Debt security-based swaps, (2) equity security-based swaps, (3) credit default security-based swaps, and (4) other security-based swaps. These schedules also request information about seven categories of swaps: (1) Interest rate swaps, (2) foreign exchange swaps, (3) commodity swaps, (4) debt index swaps, (5) equity index swaps, (6) credit default swaps, and (7) other swaps. Should different categories of security-based swaps and swaps be specified for purposes of the Form? Explain why or why not. If different categories should be specified, identify and define the alternative categories, and explain why these alternative categories should be specified.

14. Are there terms used in proposed Form SBS and/or its instructions that are not defined that should be defined? If so, identify the term and describe how it should be defined. For example, should the following terms in Schedule 1 of Part 4 and Schedule 1 of Part 5 of proposed Form SBS be defined: (1) *Debt security-based swap;* (2) *equity security-based swap;* (3) *credit default security-based swap;* (4) *interest rate swap;* (5) *foreign exchange swap;* (6) *commodity swap;* (7) *debt index swap;* (8) *equity index swap;* and/or (9) *credit default swap*? If so, how should these terms be defined?

15. Are there reporting requirements currently not included in these proposed rules that should be applied to ANC broker-dealer SBSDs? If so, please describe them.

16. Are there additional requirements to promote the reporting of composite security-based swap transactions into disaggregated data based on risk? If so, please describe them.

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.[624] The rule 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 an instance of material

[624] *See* 17 CFR 240.17a–5.

weakness. As discussed above, the Commission is proposing to amend Rule 17a–5 to account for broker-dealers that are dually registered as SBSDs or MSBSPs. The Commission also is proposing certain largely technical amendments to Rule 17a–5. With respect to stand-alone SBSDs and stand-alone MSBSPs, the Commission is proposing to include in new Rule 18a–7 many requirements that would parallel requirements in Rule 17a–5, as proposed to be amended. However, proposed Rule 18a–7 does not include a parallel requirement for every requirement in Rule 17a–5.[625] Further, the requirements in proposed Rule 18a–7, other than the requirement discussed above in section II.B.2. of this release to periodically file proposed Form SBS, would not apply to bank SBSDs and bank MSBSPs.

a. Amendments to Rule 17a–5 and Proposed Rule 18a–7

Additional ANC Broker-Dealer Reports

Paragraph (a)(6) of Rule 17a–5 requires ANC broker-dealers to periodically file certain reports with the Commission.[626] The reports contain information related to the ANC broker-dealer's use of internal models to calculate market and credit risk charges when computing net capital.[627] Specifically, ANC broker-dealers must file on either a monthly or quarterly basis the following reports:

- For each product for which the broker-dealer calculates a deduction for market risk other than in accordance with paragraphs (b)(1) or (b)(3) of Appendix E of Rule 15c3–1, the product category and the amount of the deduction for market risk (monthly report);
- A graph reflecting, for each business line, the daily intra-month VaR (monthly report);
- The aggregate VaR for the broker-dealer (monthly report);
- For each product for which the broker-dealer uses scenario analysis, the product category and the deduction for market risk (monthly report);
- Credit risk information on derivatives exposures, including: (1) Overall current exposure; (2) current exposure (including commitments) listed by counterparty for the 15 largest exposures; (3) the 10 largest commitments listed by counterparty; (4) the broker-dealer's maximum potential exposure listed by counterparty for the fifteen largest exposures; (5) the broker-dealer's aggregate maximum potential exposure; (6) a summary report reflecting the broker-dealer's current and maximum potential exposures by credit rating category; and (7) a summary report reflecting the broker-dealer's current exposure for each of the top ten countries to which the broker-dealer is exposed (by residence of the main operating group of the counterparty) (monthly report);
- Regular risk reports supplied to the broker-dealer's senior management in the format described in the application (monthly report);
- A report identifying the number of business days for which the actual daily net trading loss exceeded the corresponding daily VaR (quarterly report); and
- 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 (quarterly report).[628]

The Commission uses these reports to monitor the financial condition, internal risk management control system, and activities of an ANC broker-dealer.[629]

As discussed above in section II.A.2.a. of this release, the Commission has proposed amendments to Rule 15c3–1 that would establish liquidity stress test requirements for ANC broker-dealers, which would include ANC broker-dealer SBSDs.[630] Further, the Commission has proposed identical liquidity stress test requirements for stand-alone ANC SBSDs as part of the capital requirements for SBSDs.[631] Under the proposed liquidity stress test requirements, ANC broker-dealers and stand-alone ANC SBSDs would be required, among other things, to conduct a liquidity stress test at least monthly that takes into account certain assumed conditions lasting for 30 consecutive days.[632] The Commission is proposing to amend Rule 17a–5 to add a requirement that an ANC broker-dealer must file a monthly report with the Commission containing the results of the liquidity stress test.[633]

The Commission also proposes to include a parallel reporting requirement in proposed Rule 18a–7 applicable to stand-alone ANC SBSDs that is modeled on the reporting requirement in Rule 17a–5, as proposed to be amended, applicable to ANC broker-dealers.[634] Consequently, stand-alone ANC SBSDs would be required to file the same types of reports relating to their use of internal models and liquidity stress tests as ANC broker-dealers, including ANC broker-dealer SBSDs.

Termination of Membership in an SRO

Paragraph (b) of Rule 17a–5 requires a broker-dealer to file with the Commission the FOCUS Report Part II or Part IIA, as applicable, within two business days after terminating its membership with a national securities exchange or national securities association.[635] The Commission is proposing to amend paragraph (b) of Rule 17a–5 to provide that in either of these events the broker-dealer must file Part II, Part IIA *or proposed Form SBS*.[636] This change is designed to account for broker-dealer SBSDs and broker-dealer MSBSPs, which, as discussed above, would use proposed Form SBS instead of the FOCUS Report Part II or Part IIA.

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, among other things: (1) A statement of financial condition with appropriate notes; (2) a footnote containing a statement of the amount of the firm's net capital and required net capital and other information, if applicable, related

[625] The Commission is not proposing to include in proposed Rule 18a–7 a requirement that is parallel to the Exemption Report requirement in paragraph (d)(4) of Rule 17a–5, as proposed to be amended, because all SBSDs would be subject to the segregation requirements in proposed Rule 18a–4. Proposed Rule 18a–7 also would not include requirements that parallel the requirements in paragraphs (d)(6) and (e)(4) of Rule 17a–5, as proposed to be amended, requiring broker-dealers to file certain reports with the Securities Investor Protection Corporation (''SIPC'') because stand-alone SBSDs and stand-alone MSBSPs would not be members of SIPC. In addition, proposed Rule 18a–7 would not include a requirement that parallels the requirement for a broker-dealer to file Form Custody with the firm's DEA. Additional differences between proposed Rule 18–7 and Rule 17a–5, as proposed to be amended, are discussed below.

[626] *See* 17 CFR 240.17a–5(a)(6).

[627] *See id.*

[628] *See id.*

[629] *Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities,* 69 FR 34449.

[630] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70252–70254.

[631] *See id.*

[632] *See id.*

[633] *See* paragraph (a)(5)(vii) of Rule 17a–5, as proposed to be amended.

[634] *Compare* paragraph (a)(5) of Rule 17a–5, as proposed to be amended, *with* paragraph (a)(3) of proposed Rule 18a–7.

[635] *See* 17 CFR 240.17a–5(b).

[636] *See* paragraph (b) of Rule 17a–5, as proposed to be amended (emphasis added to highlight the modification). The Commission is not proposing to include a parallel requirement in proposed Rule 18a–7 applicable to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, or bank MSBSPs because such SBSDs and MSBSPs would not be eligible for membership in a national securities exchange or national securities association.

to the firm's net capital;[637] and (3) if, in connection with the most recent annual audit of the broker-dealer, the independent public accountant identified one or more material weaknesses, a statement by the broker-dealer that one or more material weaknesses have been identified and that a copy of the report of the independent public accountant is currently available for the customer's inspection.[638] In addition, paragraph (c) requires these broker-dealers to send their customers unaudited statements dated six months from the date of the audited statements that contain: (1) A statement of financial condition with appropriate notes; and (2) a footnote about the firm's net capital as described above.[639] Under paragraph (c)(5) of Rule 17a–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-annually the statements described above relating to the firm's net capital and, if applicable, the identification of a material weakness; and (2) makes the statement of financial condition described above available on the broker-dealer's Web site home page and maintains a toll-free number that customers can call to request a copy of the statement, which the broker-dealer must send promptly to the customer at no charge.[640]

The Commission has stated that the information sent to a customer about the broker-dealer is ''essential for a customer to have in order to judge'' whether the broker-dealer is financially sound and able to efficiently and safely handle securities transactions, monies and securities.[641] The Commission preliminarily believes that it is not necessary to amend paragraph (c) of Rule 17a–5 to account for broker-dealers that are dually registered as an SBSD or MSBSP. These registrants will be required to send or disclose to their customers, including security-based swap customers, the information currently required to be sent or disclosed under paragraph (c).[642]

However, the Commission is proposing to include a parallel customer statement requirement in proposed Rule 18a–7 that is modeled on paragraph (c) of Rule 17a–5.[643] Proposed Rule 18a–7, however, would require (rather than make optional) Web site disclosure of the mandated information.[644] Specifically, stand-alone SBSDs and stand-alone MSBSPs would be required to disclose on their Internet Web sites 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.[645] Web site disclosure generally provides customers with readily accessible information that can be easily viewed at any time. Further, this form of disclosure generally is less expensive and burdensome than other forms of disclosure. Consequently, the Commission preliminarily anticipates that firms would opt for Web site disclosure if given the choice.

In addition to the audited statement of financial condition with appropriate notes, a stand-alone SBSD would be required to disclose on its Internet Web site 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;[646] 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.[647] Further, stand-alone SBSDs and stand-alone MSBSPs also would be required to disclose on their Web sites an unaudited statement of financial condition as of a date that is six months after the date of the most recent audited annual reports and the other information discussed above.[648] This disclosure would need to be made within 30 calendar days of the date of the unaudited statement of financial condition.[649] Finally, stand-alone SBSDs and stand-alone MSBSPs would be required to make the information required to be disclosed to customers on their Web sites under paragraph (b) of proposed Rule 18a–7 available in writing upon request of the customer and maintain a toll-free number to receive such requests.[650]

Annual Reports

Under the recent amendments to Rule 17a–5, paragraph (d) of the rule requires broker-dealers, among other things, to file with the Commission each year 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.[651] The financial report must contain financial

[637] The statement in the footnote must include summary financial statements of the broker-dealer's subsidiaries consolidated pursuant to Appendix C of Rule 15c3–1, where material, and the effect thereof on the net capital and required net capital of the broker-dealer. *See* 17 CFR 240.17a–5(c)(2)(ii). Appendix C to Rule 15c3–1 requires a broker-dealer in computing its net capital and aggregate indebtedness to consolidate in a single computation assets and liabilities of any subsidiary or affiliate for which it guarantees, endorses or assumes directly or indirectly obligations or liabilities. *See* 17 CFR 240.15c3–1c. The assets and liabilities of a subsidiary or affiliate whose liabilities and obligations have not been guaranteed, endorsed, or assumed directly or indirectly by the broker-dealer may also be consolidated. *See id.*

[638] *See* 17 CFR 240.17a–5(c)(1) and (2). A *material weakness* is discussed below in more detail.

[639] *See* 17 CFR 240.17a–5(c)(3).

[640] *See* 17 CFR 240.17a–5(c)(5).

[641] *See Reports to be Made by Certain Exchange Members, Brokers, and Dealers and Related Audit Requirements of Form X–17A–5,* Exchange Act Release No. 9658 (June 30, 1972), 37 FR 14607, 14607 (July 21, 1972).

[642] See the broad definition of *customer* in paragraph (c)(4) of Rule 17a–5. *See* 17 CFR 240.17a–5(c)(4). As discussed below in section II.B.3.b. of this release, the Commission is proposing certain technical amendments to paragraph (c) of Rule 17a–5.

[643] *Compare* 17 CFR 240.17a–5(c), *with* paragraph (b) of proposed Rule 18a–7.

[644] *See* paragraph (b) of proposed Rule 18a–7.

[645] *See* paragraph (b)(1)(i) of proposed Rule 18a–7. As discussed in more detail below, the Commission is proposing to require nonbank SBSDs and nonbank MSBSPs to annually file audited financial reports with the Commission that would need to include, among other items, a statement of financial condition. Under paragraph (c)(2) of Rule 17a–5, a broker-dealer's audited statements must be sent to customers within 105 calendar days of the date of the broker-dealer's audited annual reports. *See* 17 CFR 240.17a–5(c)(2). Further, the broker-dealer's audited annual reports must be filed with the Commission within 60 calendar days after the end of the broker-dealer's fiscal year. *See* 17 CFR 240.17a–5(d)(5). Consequently, the broker-dealer has 45 calendar days after filing the audited annual reports with the Commission to send the audited financial statements to customers. The Commission is proposing a shorter timeframe (10 business days) in proposed Rule 18a–7 to make the web-based disclosures after filing the audited annual reports with the Commission because posting this information to the internet should take substantially less time than preparing mailings to be sent to all customers.

[646] The statement would need to include summary financial statements of the broker-dealer's subsidiaries consolidated pursuant to Appendix C of Rule 15c3–1, where material, and the effect thereof on the net capital and required net capital of the SBSD. *See* paragraph (b)(1)(ii) of proposed Rule 18a–7.

[647] *See* paragraph (b)(1)(iii) of proposed Rule 18a–7.

[648] *See* paragraph (b)(2) of proposed Rule 18a–7.

[649] The Commission is proposing a shorter time period (30 calendar days after the date of the unaudited financial statement as opposed to 65 calendar days) for the web-based disclosure of the unaudited financial statements and other statements, because, as discussed above, posting this information on a Web site should take less time than mailing documents. *Compare* paragraph (b)(2) of proposed Rule 18a–7, *with* 17 CFR 240.17a–5(c)(3).

[650] *See* paragraph (b)(3) of proposed Rule 18a–7. While bank SBSDs and bank MSBSPs would not be subject to paragraph (b) of proposed Rule 18a–7, bank call reports are available at: *http://www2.fdic.gov/Call_TFR_Rpts/*. *See* 12 CFR 261.10(d)(3) and (4); 12 CFR 304.2; 12 CFR Pt. 3, Appendix C.

[651] *See* 17 CFR 240.17a–5(d). *See also Broker-Dealer Reports,* 78 FR 51910 (setting forth the effective dates for the amendments).

statements, including, among others, a statement of financial condition, a statement of income, and a statement of cash flows.[652] The financial report 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.[653]

A broker-dealer that does not claim it was exempt from Rule 15c3–3 throughout the most recent fiscal year must file the compliance report, and a broker-dealer that does claim it was exempt from Rule 15c3–3 throughout the most recent fiscal year must file the exemption report.[654] The compliance report must contain statements as to whether: (1) The broker-dealer has established and maintained *Internal Control Over Compliance* (a defined term); (2) the *Internal Control Over Compliance* of the broker-dealer was effective during the most recent fiscal year; (3) the *Internal Control Over Compliance* of the broker-dealer was effective as of the end of the most recent fiscal year; (4) the broker-dealer was in compliance with Rule 15c3–1 and paragraph (e) of Rule 15c3–3 as of the end of the most recent fiscal year; and (5) the information the broker-dealer used to state whether it was in compliance with Rule 15c3–1 and paragraph (e) of Rule 15c3–3 was derived from the books and records of the broker-dealer.[655] Further, if applicable, the compliance report must contain a description of: (1) Each identified *material weakness* (a defined term) in the *Internal Control Over Compliance* during the most recent fiscal year; and (2) each instance of non-compliance with Rule 15c3–1 or paragraph (e) of Rule 15c3–3 as of the end of the most recent fiscal year.[656] The exemption report must contain the following statements made to the best knowledge and belief of the broker-dealer: (1) A statement that identifies the provisions in paragraph (k) of Rule 15c3–3 under which the broker-dealer claimed an exemption from Rule 15c3–3; (2) a statement that the broker-dealer met the identified exemption provisions without exception or that it met the identified exemption provisions throughout the most recent fiscal year except as described in the exemption report; and (3) if applicable, a statement that identifies each exception during the most recent fiscal year in meeting the exemption provisions and that briefly describes the nature of each exception and the approximate date(s) on which the exception existed.[657]

The Commission is proposing amendments to the requirements in paragraph (d) of Rule 17a–5 that require broker-dealers to file annual reports with the Commission and is proposing to include a parallel requirement in proposed Rule 18a–7 to require stand-alone SBSDs and stand-alone MSBSPs to file annual reports with the Commission.[658] The amendments to paragraph (d) of Rule 17a–5 are designed to account for broker-dealers that are dually registered as an SBSD or MSBSP.

First, under the proposals, all broker-dealer SBSDs would be required to file the compliance report. It is likely that a broker-dealer SBSD would carry funds and securities of customers and, therefore, would not be exempt from Rule 15c3–3. In this case, under the recently adopted requirements of Rule 17a–5, the broker-dealer SBSD would be required to file the compliance report. The Commission believes that a broker-dealer SBSD that has only security-based swap customers also should be required to file the compliance report because this report and the related report of the independent public accountant covering the compliance report would serve the same customer protection objectives in terms of promoting compliance with proposed Rule 18a–4 as these reports will serve in terms of promoting compliance with Rule 15c3–3.[659] For this reason, the Commission is proposing to amend paragraph (d)(1)(i)(B)(*1*) of Rule 17a–5 to provide that a broker-dealer must file the *compliance report* if it did not claim it was exempt from Rule 15c3–3 throughout the most recent fiscal year or it is subject to proposed Rule 18a–4.[660] Further, paragraph (d)(1)(i)(B)(*2*) of Rule 17a–5 would be amended to provide that a broker-dealer must file the exemption report if the broker-dealer did claim it was exempt from Rule 15c3–3 throughout the most recent fiscal year and it is not subject to proposed Rule 18a–4.[661]

Second, paragraph (d) of Rule 17a–5 provides that the financial statements in the financial report must be prepared in accordance with U.S. GAAP and must be in a format that is consistent with, and the supporting schedules must include information from, the FOCUS Report Part II or Part IIA.[662] Further, the supporting schedules must contain a reconciliation if the computation of net capital under Rule 15c3–1 or the customer reserve requirement under Rule 15c3–3 in the supporting schedule is materially different than computation in the broker-dealer's most recent FOCUS Report Part II or Part IIA.[663] The amendments to the reporting requirements in paragraph (d) of Rule 17a–5 would add a reference to proposed Rule 18a–4 to be included with the existing references to Rules 15c3–1 and 15c3–3, and to proposed Form SBS to be included with each reference to the FOCUS Report Part II and Part IIA to account for broker-dealer SBSDs and broker-dealer MSBSPs that would use proposed Form SBS rather than the FOCUS Report Part II or Part IIA.[664]

Third, as discussed above, the supporting schedules require a computation of the reserve requirements under Rule 15c3–3 and information relating to the possession or control requirements under Rule 15c3–3.[665] Further, the statements required in the compliance report and the definitions of *Internal Control Over Compliance* and *material weakness* for the purposes of the compliance report make reference to Rule 15c3–3 or paragraph (e) of Rule 15c3–3.[666] The proposed amendments would add references to proposed Rule 18a–4 generally or to specific parallel

[652] *See* 17 CFR 240.17a–5(d)(2)(i).

[653] *See* 17 CFR 240.17a–5(d)(2)(ii).

[654] *See* 17 CFR 240.17a–5(d)(1)(i)(B)(*1*) and (*2*).

[655] *See* 17 CFR 240.17a–5(d)(3)(i)(A). The term *Internal Control Over Compliance* means internal controls that have the objective of providing the broker-dealer with reasonable assurance that non-compliance with Rule 15c3–1, Rule 15c3–3, Rule 17a–13, or any rule of the DEA of the broker-dealer that requires account statements to be sent to the customers of the broker-dealer (an ''Account Statement Rule'') will be prevented or detected on a timely basis. *See* 17 CFR 240.17a–5(d)(3)(i).

[656] *See* 17 CFR 240.17a–5(d)(3)(i)(B) and (C). 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 Rule 15c3–1 or paragraph (e) of Rule 15c3–3 will not be prevented or detected on a timely basis or that non-compliance to a material extent with Rule 15c3–3, except for paragraph (e), Rule 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-dealer, in the normal course of performing their assigned functions, to prevent or detect on a timely basis non-compliance with Rule 15c3–1, Rule 15c3–3, Rule 17a–13, or any Account Statement Rule.

[657] *See* 17 CFR 240.17a–5(d)(4).

[658] *Compare* paragraph (d) of Rule 17a–5, as proposed to be amended, *with* paragraph (c) of proposed Rule 18a–7.

[659] *See Broker-Dealer Reports,* 78 FR 51916–51920.

[660] *See* paragraph (d)(1)(i)(B)(*1*) of Rule 17a–5, as proposed to be amended.

[661] *See* paragraph (d)(1)(i)(B)(*2*) of Rule 17a–5, as proposed to be amended.

[662] *See* 17 CFR 240.17a–5(d)(2)(i) and (ii).

[663] *See* 17 CFR 240.17a–5(d)(2)(iii).

[664] *See* paragraphs (d)(2)(i) through (iii) of Rule 17a–5, as proposed to be amended.

[665] *See* 17 CFR 240.17a–5(d)(2)(ii).

[666] *See* 17 CFR 240.17a–5(d)(3)(i) through (iii).

requirements in proposed Rule 18a–4 so that the supporting schedule and compliance report requirements would incorporate information relating to proposed Rule 18a–4 in addition to information relating to Rule 15c3–3.[667]

As indicated above, the Commission is proposing to include parallel annual reporting requirements in proposed Rule 18a–7 applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled on paragraph (d) of Rule 17a–5, as proposed to be amended.[668] Under these proposed parallel requirements, stand-alone SBSDs and stand-alone MSBSPs would be required to annually file with the Commission a financial report.[669] In addition, stand-alone SBSDs would be required to file a compliance report stating that the SBSD has established and maintains internal controls that have the objective of providing reasonable assurance that non-compliance with Rules 18a–1, 18a–4, and 18a–9 will be prevented or detected on a timely basis.[670]

Further, stand-alone SBSDs and stand-alone MSBSPs would be required to file a report of an independent public accountant covering the financial report and the compliance report, as applicable.[671] The Commission is not proposing to include a requirement in proposed Rule 18a–7 that would parallel the exemption report requirement in Rule 17a–5 because there are no exemption provisions in proposed Rule 18a–4 that parallel the exemption provisions in Rule 15c3–3.[672]

The financial report under Rule 18a–7 would need to contain the same types of financial statements as are required for the financial report under Rule 17a–5.[673] Further, it also would need to contain the same types of supporting schedules and reconciliations as the financial report under Rule 17a–5, as proposed to be amended, except that the Rule 18a–7 financial report would require information relating to Rules 18a–1 and 18a–2, as applicable, rather than Rule 15c3–1.[674] The financial report under Rule 17a–5, as proposed to be amended, and proposed Rule 18a–7 would require information relating to proposed Rule 18a–4.

Similar to the financial report, the compliance report under Rule 18a–7 would need to contain the same type of statements and information as the compliance report under Rule 17a–5, as proposed to be amended, except the Rule 18a–7 compliance report would require information relating to Rules 18a–1 and 18a–9 rather than Rules 15c3–1, Rule 15c3–3, Rule 17a–13, and the Account Statement Rules.[675] The compliance report under Rule 17a–5, as proposed to be amended, and proposed Rule 18a–7 would require information relating to proposed Rule 18a–4.

Timing and Location of Filing

Paragraph (d)(5) of Rule 17a–5 provides that a broker-dealer must file the annual reports with the Commission not more than sixty calendar days after the end of the fiscal year of the broker-dealer.[676] The Commission is proposing to include a parallel requirement in proposed Rule 18a–7 that would mirror paragraph (d)(5) of Rule 17a–5.[677] Consequently, stand-alone SBSDs and stand-alone MSBSPs would be required to file the annual reports required under proposed Rule 18a–7 within 60 calendar days after the end of their fiscal years.[678]

Paragraph (d)(6) of Rule 17a–5 provides that a broker-dealer must 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.[679] The Commission is proposing to include a parallel requirement in proposed Rule 18a–7 that is modeled on paragraph (d)(5) of Rule 17a–5.[680] In particular, paragraph (c)(5) of proposed Rule 18a–5 would require stand-alone SBSDs and stand-alone MSBSPs to file the annual reports at the regional office of the Commission for the region in which the SBSD or MSBSP has its principal place of business and the Commission's principal office in Washington, DC.[681]

Nature and Form of the Reports

Paragraph (e) of Rule 17a–5 among other things: (1) Provides certain exceptions from the requirement that a broker-dealer engage an independent public accountant to audit the annual reports, (2) requires the broker-dealer to attach an oath or affirmation to the financial reports; (3) provides that the annual reports are not confidential except that the broker-dealer can request confidentiality for all of the annual reports other than the statement of financial condition; and (4) requires a broker-dealer to file certain additional reports with SIPC.[682]

Paragraph (e)(2) of Rule 17a–5 requires a broker-dealer to attach an oath or affirmation to its financial report indicating that the report is true and correct and that the broker-dealer does not have any proprietary interest in one of its customer accounts.[683] Paragraph (e)(2) also requires that the oath or affirmation must be made before a person duly authorized to administer such oaths or affirmations and prescribes who must make the oath or affirmation on behalf of the broker-dealer.[684] The Commission adopted the FOCUS Report Part III as the means for the broker-dealer to provide the oath or affirmation required under paragraph (e)(2).[685] The FOCUS Report Part III elicits certain basic information about

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[667] *See* paragraphs (d)(2)(ii) and (iii) and (d)(3)(i) through (iii) of Rule 17a–5, as proposed to be amended.

[668] *Compare* paragraphs (d)(1) through (3) of Rule 17a–5, as proposed to be amended, *with* paragraphs (c)(1) through (3) of proposed Rule 18a–7.

[669] *See* paragraph (c)(1)(i)(A) of proposed Rule 18a–7.

[670] *See* paragraph (c)(1)(i)(B) of proposed Rule 18a–7.

[671] *See* paragraph (c)(1)(i)(C) of proposed Rule 18a–7.

[672] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70274–70288.

[673] *Compare* 17 CFR 240.17a–5(d)(2)(i), *with* paragraph (c)(2)(i) of proposed Rule 18a–7.

[674] *Compare* Rule 17a–5, as proposed to be amended, *with* paragraph (c)(2)(ii) and (iii) of proposed Rule 18a–7.

[675] *Compare* 17 CFR 240.17a–5(d)(3), *with* paragraph (c)(3) of proposed Rule 18a–7.

[676] *See* 17 CFR 240.17a–5(d)(5).

[677] *Compare* 17 CFR 240.17a–5(d)(5), *with* paragraph (c)(4) of proposed Rule 18a–7.

[678] *See* paragraph (c)(4) of proposed Rule 18a–7.

[679] *See* 17 CFR 240.17a–5(d)(6). Paragraph (d)(6) further provides that the broker-dealer must provide copies of the reports to all SROs of which the broker-dealer is a member, unless the SRO by rule waives this requirement. *See id.*

[680] *Compare* 17 CFR 240.17a–5(d)(6), *with* paragraph (c)(5) of proposed Rule 18a–7.

[681] *See* paragraph (c)(5) of proposed Rule 18a–7. There would be no requirement to file the reports with SIPC or a DEA because stand-alone SBSDs and stand-alone MSBSPs would not be members of SIPC and would not have a DEA.

[682] *See* 17 CFR 240.17a–5(e).

[683] *See* 17 CFR 240.17a–5(e)(2).

[684] *See* 17 CFR 240.17a–5(e)(2). 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. *Id.*

[685] *See* 17 CFR 242.617. *See also FOCUS Reporting System; Requirements for Financial Reporting,* Exchange Act Release No. 14242 (Dec. 9, 1977), 42 FR 63883 (Dec. 21, 1977) (''The Commission proposed the facing page for the annual report based on its experience that the processing of the annual report would be greatly facilitated if the identification information were submitted in a consistent format. The proposed facing page requires basic identification information, including the . . . name and address of the broker or dealer and its accountant, the oath or affirmation, and the itemization of the materials included in the report.''). *See also* FOCUS Report Part III, *available at http://www.sec.gov/about/forms/formx–17a–5_3.pdf.*

the broker-dealer and the independent public accountant (*e.g.,* name and address), contains a checklist to indicate the statements and other information included in the annual reports, and sets forth the text of the oath or affirmation required under paragraph (e)(2) of Rule 17a–5.[686]

The Commission is proposing to amend paragraph (e)(2) of Rule 17a–5 to remove the text of the oath or affirmation because the text of oath or affirmation is set forth on the FOCUS Report Part III.[687] The proposed amendments also would state explicitly in the text of Rule 17a–5 that a broker-dealer is required to attach a complete and executed FOCUS Report Part III to the confidential and non-confidential portions of the annual reports filed with the Commission.[688]

In addition, the Commission is proposing a number of amendments to the FOCUS Report Part III to accommodate use of the FOCUS Report Part III by OTC derivatives dealers, stand-alone SBSDs, and stand-alone MSBSPs.[689] The Commission also proposes amendments to Part III of the FOCUS Report to address the recently adopted amendments to Rule 17a–5.[690] Further, the Commission is proposing a number of technical changes to the FOCUS Report Part III.[691]

The Commission is proposing to add a reference to proposed Form SBS to the references to the FOCUS Report Part II and Part IIA in paragraph (e)(3) of Rule 17a–5 to account for broker–dealers that are dually registered as an SBSD or MSBSP and, therefore, would use proposed Form SBS instead of the FOCUS Report Part II or Part IIA.[692]

The Commission is proposing to include parallel provisions in proposed Rule 18a–7 to the provisions in paragraph (e) of Rule 17a–5, as proposed to be amended. Under these provisions, stand-alone SBSDs and stand-alone MSBSPs would be required to attach a completed and executed FOCUS Report Part III to the confidential and non-confidential portions of the annual report.[693] In addition, paragraph (d)(2) of proposed Rule 18a–7 would provide that the annual reports 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 will be deemed confidential to the extent permitted by law.[694] Paragraph (d)(2) of proposed Rule 18a–7 would mirror the confidential treatment of broker-dealer annual reports under Rule 17a–5.[695]

Qualification of the Independent Public Accountant

As discussed above, a broker-dealer is required to file with the Commission a report of a PCAOB-registered independent public accountant covering the annual reports.[696] 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 independent public accountant.[697]

More specifically, paragraph (f)(1) of Rule 17a–5 provides that the independent public accountant must be qualified and independent in accordance with the independence requirements of Rule 2–01 of Regulation S–X and registered with the PCAOB if required by the Sarbanes-Oxley Act of 2002.[698]

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[686] *See* FOCUS Report Part III.

[687] *Compare* 17 CFR 240.17a–5(e)(2), *with* paragraph (e)(2) of Rule 17a–5, as proposed to be amended.

[688] *See* paragraph (e)(2) of Rule 17a–5, as proposed to be amended.

[689] These amendments would: (1) Add a reference to Rule 17a–12 and proposed Rule 18a–7 to the subtitle; (2) remove the phrase ''Name of Broker-Dealer'' and in its place add the phrase ''Name of Firm'' in section A; (3) add check boxes to section A for the filer to indicate whether it is registered as an OTC derivatives dealer, broker-dealer, SBSD, and/or MSBSP; (4) add to the check list at the end of the Form boxes to indicate whether the annual reports attached to the Form include: (i) A computation of net capital pursuant to proposed Rule 18a–1; (ii) a computation of tangible net worth under Rule 18a–2; (iii) a computation for determination of reserve requirements pursuant to proposed Rule 18a–4; (iv) information relating to possession or control requirements under proposed Rule 18a–4; (v) a reconciliation, including appropriate explanation of the computation of net capital under proposed Rule 18a–1; (vi) a reconciliation, including appropriate explanation of the computation of tangible net worth under proposed Rule 18a–2; (vii) a reconciliation, including appropriate explanation of the computation of reserve requirements under proposed Rule 18a–4; (viii) an independent public accountant's report based on an examination of the financial statements under Rule 17a–12; (ix) an independent public accountant's report based on an examination of the financial report under proposed Rule 18a–7; and (x) an independent public accountant's report based on an examination of the compliance report under proposed Rule 18a–7; and (5) replace the check box entitled ''A Reconciliation, including appropriate explanation of the Computation of Net Capital Under Rule 15c3–1 and the Computation for Determination of the Reserve Requirements Under Exhibit A of Rule 15c3–3'' with two check boxes entitled: (i) ''A reconciliation, including appropriate explanation of the computation of net capital under 17 C.F.R. § 240.15c3–1''; and (ii) A reconciliation, including appropriate explanation of the computation of net capital under 17 C.F.R. § 240.15c3–3. *See* Part III of the FOCUS Report, as proposed to be amended. The proposals also would amend the instructions at the end of the Form with respect to seeking confidential treatment for portions of the annual reports by adding a reference to the provisions of proposed Rule 18a–7 governing how to request confidential treatment and replacing the phrase ''For conditions of'' with the phrase ''To request.'' *Id.*

[690] *See Broker-Dealer Reports,* 78 FR 51910. These amendments would: (1) Add the phrase ''PCAOB-Registered'' before the phrase ''Independent Public Accountant'' in section B; (2) remove check boxes in section B to indicate whether the independent public accountant is certified, a public accountant, or an accountant not registered in the U.S.; (3) add to the check list at the end of the Form boxes to indicate whether the annual reports attached to the Form include: (i) The exemption report under Rule 17a–5; (ii) the compliance report under Rule 17a–5; (iii) the independent public accountant's report based on an examination of the financial report under Rule 17a–5; (iv) the independent public accountant's report based on the examination of the compliance report, as required by Rule 17a–5; or (v) the independent public accountant's report based on the review of the exemption report under Rule 17a–5. *See* Part III of the FOCUS Report, as proposed to be amended. The amendments also would remove from the checklist an item to indicate whether any material inadequacies under Rule 17a–5 were found to exist or found to have existed since the date of the previous audit. *See id.*

[691] The proposed technical amendments are as follows: (1) Removing the phrase ''See Section 240.17a–5(e)(2)'' in the instruction for broker-dealers that claim an exemption from the requirement that the annual report be covered by an opinion of an independent public accountant and in its place adding the phrase ''See 17 CFR 240.17a–5(e)(1)(ii), if applicable.''; and (2) removing the ''Statement of Changes in Financial Condition'' from the checklist and in its place adding the phrase ''Statement of cash flows''.

[692] *See* paragraph (e)(3) of Rule 17a–5, as proposed to be amended.

[693] *Compare* paragraph (e)(2) of Rule 17a–5, as proposed to be amended, *with* paragraph (d)(1) of proposed Rule 18a–7.

[694] *See* paragraph (d)(2) of proposed Rule 18a–7.

[695] *Compare* 17 CFR 240.17a–5(e)(3), *with* paragraph (d)(2) of proposed Rule 18a–7.

[696] *See* 17 CFR 240.17a–5(d)(1)(i)(C).

[697] *See* 17 CFR 240.17a–5(f).

[698] *See* 17 CFR 240.17a–5(f)(1). *See also* 15 U.S.C 78q(e)(1)(A); 17 CFR 210.2–01. Prior to the Sarbanes-Oxley Act, section 17(e)(1)(A) of the Exchange Act required that the annual financial statements a broker-dealer must file with the Commission be ''certified by an independent public accountant.'' The Sarbanes-Oxley Act established the PCAOB and amended section 17(e)(1)(A) to provide that the annual financial statements must be ''certified by a registered [with the PCAOB] public accounting firm.'' *See Sarbanes-Oxley Act,* Public Law 107–204, 101, 116 Stat. 745 (2002); 15 U.S.C 78q(e)(1)(A). Title I of the Sarbanes-Oxley Act prescribed specific PCAOB registration, standards-setting, inspection, investigation, disciplinary, foreign application, oversight, and funding programs in connection with audits of issuers. *See* Public Law 107–204 generally and, in particular, § 2(a)(7) (defining the term *issuer* as an issuer as defined in section 3 of the Exchange Act, the securities of which are registered under section 12 of the Exchange Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 and that it has not withdrawn). However, as originally enacted, the Sarbanes-Oxley Act did not expressly prescribe similar programs in connection with audits of broker-dealers that are not issuers. The Dodd-Frank Act amended the Sarbanes-Oxley Act to provide the PCAOB with explicit authority to,

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Paragraph (f)(2) requires a broker-dealer to annually file with the Commission no later than December 10 a statement regarding the independent public accountant engaged to audit its annual reports.[699] The statement must contain, among other things: (1) The name, address, telephone number, and registration number of the broker-dealer; (2) the name, address, and telephone number of the independent public accountant; (3) the date of the fiscal year of the annual reports of the broker-dealer covered by the engagement; (4) whether the engagement is for a single year or is of a continuing nature; and (5) a representation that the independent public accountant has undertaken to prepare reports covering the annual reports as required by paragraph (g) of Rule 17a–5.[700]

Paragraph (f)(3) of Rule 17a–5 requires a broker-dealer to file a notice with the Commission if it replaces the independent public accountant engaged to prepare reports covering the annual reports.[701] The notice must contain, among other things: (1) The date of the notification of termination or the engagement of the new independent public accountant; (2) the details of any issues arising during the twenty-four months (or the period of the engagement, if less than twenty-four 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; and (3) whether the accountant's report covering the annual reports 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.[702]

Broker-dealer SBSDs and broker-dealer MSBSPs will be required to engage independent public accountants that meet the qualifications in Rule 17a–5 and file the statements and notices required by the rule. The Commission is proposing to include in proposed Rule 18a–7 parallel independent public accountant qualification, statement, and notice requirements applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled on the requirements in paragraph (f) of Rule 17a–5.[703]

Paragraph (e)(1) of proposed Rule 18a–7 is modeled on paragraph (f)(1) of Rule 17a–5.[704] Paragraph (e)(1) would provide that an independent public accountant engaged by a stand-alone SBSD or stand-alone MSBSP must be qualified and independent in accordance with Rule 2–01 of Regulation S–X and registered with the PCAOB.[705] While the PCAOB's authority with respect to audits of stand-alone SBSDs and stand-alone MSBSPs would be more limited than its authority with respect to audits of issuers and broker-dealers, the Commission preliminarily believes that it would be appropriate to require stand-alone SBSDs and stand-alone MSBSPs to engage an independent public accountant that is registered with the PCAOB.[706] In particular, the

among other things, establish (subject to Commission approval) auditing and related attestation, quality control, ethics, and independence standards for registered public accounting firms with respect to their preparation of audit reports to be included in broker-dealer filings with the Commission, and the authority to conduct and require an inspection program of registered public accounting firms that audit broker-dealers. *See* Public Law 111–203, 982. Further, the Dodd-Frank Act amended section 17(e) of the Exchange Act to provide, among other things, that a broker-dealer must annually file with the Commission a balance sheet and income statement certified by an independent public accounting firm, or by a registered (with the PCAOB) public accounting firm if the firm is required to be registered (with the PCAOB) under the Sarbanes-Oxley Act of 2002. *See* Public Law 111–203, 982(e)(1); 15 U.S.C 78q(e)(1). Additionally, the Dodd-Frank Act added section 104(a)(2)(D) to the Sarbanes-Oxley Act, which provides that a public accounting firm is not required to register with the PCAOB if the public accounting firm is exempt from an inspection program established by the PCAOB. *See id.* To date, the PCAOB has not exempted the audits by independent public accountants of any class of broker-dealer from the PCAOB's permanent inspection program. *See Public Company Accounting Oversight Board; Order Approving Proposed Temporary Rule for an Interim Program of Inspection Related to Audits of Brokers and Dealers,* Exchange Act Release No. 65163 (Aug. 18, 2011), 76 FR 52996 (Aug. 24, 2011). At this time, there is no reason to expect that any types of broker-dealer audits will be exempt from the PCAOB permanent inspection program, and any PCAOB determination to exempt broker-dealer audits from the PCAOB's permanent inspection program must be approved by the Commission.

[699] *See* 17 CFR 240.17a–5(f)(2). Paragraph (f)(2) further provides that if the engagement of an independent public accountant is of a continuing nature, providing for successive engagements, no further filing is required after the original filing. *See id.* On the other hand, 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. *See id.*

[700] *See* 17 CFR 240.17a–5(f)(2). Under the recent amendments to Rule 17a–5, broker-dealers that clear transactions or carry customer accounts must include certain representations in the statement as well. *See Broker-Dealer Reports,* 78 FR 51992–51993.

[701] *See* 17 CFR 240.17a–5(f)(3). The notice must be received at the Commission's principal office in Washington, DC and at the applicable regional office of the Commission not more than fifteen days after: (1) The broker-dealer has notified the independent public accountant that provided the reports covering the annual reports for the most recent fiscal year that the independent public accountant's services will not be used in future engagements; (2) the broker-dealer has notified an independent public accountant that was engaged to provide the reports covering the annual reports that the engagement has been terminated; (3) an independent public accountant has notified the broker-dealer that the independent public accountant would not continue under an engagement to provide the reports covering the annual reports; or (4) a new independent public accountant has been engaged to provide the reports covering the annual reports without any notice of termination having been given to or by the previously engaged independent public accountant. *See id.*

[702] *See* 17 CFR 240.17a–5(f)(3).

[703] *Compare* 17 CFR 240.17a–5(f), *with* paragraph (e) of proposed Rule 18a–7.

[704] *Compare* 17 CFR 240.17a–5(f)(1), *with* paragraph (e)(1) of proposed Rule 18a–7.

[705] *See* paragraph (e)(1) of proposed Rule 18a–7. With respect to qualifications, paragraph (a) of Rule 2–01 provides that the Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the place of the accountant's residence or principal office. *See* 17 CFR 210.2–01(a). Paragraph (a) further provides that the Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of the accountant's residence or principal office. *See id.* With respect to independence, paragraph (b) of Rule 2–01 provides that the Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement. *See* 17 CFR 210.2–01(b). Paragraph (b) further provides that in determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission. *See id.* Paragraph (c) of Rule 2–01 sets forth a non-exclusive specification of circumstances inconsistent with independence as required under paragraph (b). *See* 17 CFR 210.2–01(c). For example, an accountant is prohibited from providing the following non-audit services, among others, to an audit client: (1) Bookkeeping or other services related to the accounting records or financial statements of the audit client; (2) financial information systems design and implementation; and (3) management functions or human resources. *See id.* Not all of the independence requirements in Rule 2–01 that are applicable to audits of issuers would be applicable to engagements under proposed Rule 18a–7. For example, the independent public accountants of stand-alone SBSDs and stand-alone MSBSPs that are not issuers would not be subject to the partner rotation requirements or the compensation requirements of Rule 2–01 because the statute mandating those requirements is limited to issuers. *See* 15 U.S.C. 78j–1(j); 17 CFR 210.2–01(c)(6). Additionally, the independent public accountants would not be subject to the cooling-off period requirements for employment or the audit committee pre-approval requirements because those requirements only reference issuers within the independence rules. *See* 17 CFR 210.2–01(c)(2) and (c)(7).

[706] *See Custody of Funds or Securities of Clients by Investment Advisers,* Investment Advisers Act Release No. 2968 (Dec. 30, 2009), 75 FR 1456 (Jan. 11, 2010) (adopting rules requiring certain investment advisers to undergo annual surprise examinations performed by, and obtain internal control reports prepared by, independent public accountants registered with the PCAOB).

Commission has greater confidence in the quality of audits conducted by an independent public accountant registered with the PCAOB.[707]

Paragraph (e)(2) of proposed Rule 18a–7 is modeled on paragraph (f)(2) of Rule 17a–5.[708] Under paragraph (e)(2), a stand-alone SBSD or stand-alone MSBSP would be required to annually file with the Commission no later than December 10 a statement regarding the independent public accountant engaged to audit its annual reports.[709] The statement would need to contain similar information as is required in the statement under paragraph (f)(2) of Rule 17a–5.[710]

Paragraph (e)(3) of proposed Rule 18a–7 is modeled on paragraph (f)(3) of Rule 17a–5.[711] Under paragraph (e)(3), a stand-alone SBSD or stand-alone MSBSP would be required to file a notice with the Commission if the firm replaces the independent public accountant engaged to prepare the reports covering the annual reports.[712] The notice would need to contain the same information as is required in the notice under paragraph (f)(3) of Rule 17a–5.[713]

Engagement of the Independent Public Accountant

Under the recent amendments to Rule 17a–5, paragraph (g) of the rule 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 report or a report based on a review of the exemption report.[714] As broker-dealers, dually registered broker-dealer SBSDs and broker-dealer MSBSPs will be required to engage their independent public accountants to undertake an examination of their financial report and compliance report.

The Commission is proposing to include parallel engagement of accountant requirements in proposed Rule 18a–7 that would be applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled on the requirements in paragraph (g) of Rule 17a–5.[715] Specifically, paragraph (f) of proposed Rule 18a–7 would provide that the independent public accountant engaged by a stand-alone SBSD or stand-alone MSBSP must, as part of the engagement, undertake to prepare a report based on an examination of the financial report and, in the case of the SBSD, a report based on an examination of certain statements in the compliance report.[716] There would not be a provision relating to an exemption report because, as explained above, broker-dealer SBSDs and stand-alone SBSDs would be required to file the compliance report (and would not be permitted to file the exemption report in lieu of the compliance report).

Notification of Non-Compliance or Material Weakness

Under the recent amendments to Rule 17a–5, paragraph (h) of the rule provides that the independent public accountant engaged to prepare reports covering the annual reports must immediately notify the broker-dealer if the accountant determines during the course of preparing the reports that the broker-dealer is not in compliance with Rule 15c3–1, Rule 15c3–3, Rule 17a–13, or an Account Statement Rule or if the accountant determines that any material weakness exists in the broker-dealer's *Internal Control Over Compliance*.[717] If the notice from the accountant concerns an instance of non-compliance that would require a broker-dealer to provide a notification under Rule 15c3–1, Rule 15c3–3, or Rule 17a–11, or if the notice concerns a material weakness, the broker-dealer must provide a notification in accordance with Rule 15c3–1, Rule 15c3–3, or Rule 17a–11, as applicable, and provide a copy of the notification to the independent public accountant.[718] 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 and the DEA within one business day.[719] The report from the independent public accountant must, if the broker-dealer failed to file a notification, describe any instances of non-compliance that required a

[707] *See id.* at 1460.

[708] *Compare* 17 CFR 240.17a–5(f)(2), *with* paragraph (e)(2) of proposed Rule 18a–7.

[709] *See* paragraph (e)(2) of proposed Rule 18a–7. Like paragraph (f)(2) of Rule 17a–5, paragraph (e)(2) of proposed Rule 18a–7 would provide that if the engagement of an independent public accountant is of a continuing nature, providing for successive engagements, no further filing would be required. *See id.* Further, if the engagement is for a single year, or if the most recent engagement has been terminated or amended, a new statement would need to be filed by the required date. *See id.*

[710] *Compare* 17 CFR 240.17a–5(f)(2), *with* paragraph (e)(2) of proposed Rule 18a–7.

[711] *Compare* 17 CFR 240.17a–5(f)(3), *with* paragraph (e)(3) of proposed Rule 18a–7.

[712] *See* paragraph (e)(3) of proposed Rule 18a–7. Like paragraph (f)(3) of Rule 17a–5, paragraph (e)(3) of proposed Rule 18a–7 would require that the notice must be received at the Commission's principal office in Washington, DC and at the applicable regional office of the Commission not more than 15 days after: (1) The stand-alone SBSD or stand-alone MSBSP has notified the independent public accountant that provided the reports covering the annual reports for the most recent fiscal year that the independent public accountant's services will not be used in future engagements; (2) the stand-alone SBSD or stand-alone MSBSP has notified an independent public accountant that was engaged to provide the reports covering the annual reports that the engagement has been terminated; (3) an independent public accountant has notified the stand-alone SBSD or stand-alone MSBSP that the independent public accountant would not continue under an engagement to provide the reports covering the annual reports; or (4) a new independent public accountant has been engaged to provide the reports covering the annual reports without any notice of termination having been given to or by the previously engaged independent public accountant. *See id.*

[713] *Compare* 17 CFR 240.17a–5(f)(3), *with* paragraph (e)(3) of proposed Rule 18a–7.

[714] *See* 17 CFR 240.17a–5(g). The PCAOB recently adopted, and the Commission approved, standards for examinations of compliance reports of broker-dealers and reviews of exemption reports of broker-dealers and for audits of supplemental information accompanying financial statements. *See Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rules, Standards for Attestation Engagements Related to Broker and Dealer Compliance or Exemption Reports Required by the U.S. Securities and Exchange Commission and Related Amendments to PCAOB Standards,* Exchange Act Release No. 71524 (Feb. 12, 2014). *See also* PCAOB, *Standards for Attestation Engagements Related to Broker and Dealer Compliance or Exemption Reports Required by the U.S. Securities and Exchange Commission,* PCAOB Release No. 2013–007 (Oct. 10, 2013), *available at http://pcaobus.org/Rules/Rulemaking/Docket035/PCAOB_Release_2013_007.pdf*; PCAOB. The PCAOB also recently adopted, and the Commission approved Auditing Standard No. 17, which applies when the auditor of a company's financial statements is engaged to perform audit procedures and report on supplemental information that accompanies financial statements, including supporting schedules that broker-dealers are required to file pursuant to Rule 17a–5 under the Exchange Act. *See Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rules, Auditing Standard No. 17, Auditing Supplemental Information Accompanying Audited Financial Statements, and Related Amendments to PCAOB Standards,* Exchange Act Release No. 71525 (Feb. 12, 2014). *See also,* PCAOB, *Auditing Standard No. 17: Auditing Supplemental Information Accompanying Audited Financial Statements and Related Amendments to PCAOB Standards,* PCAOB Release No. 2013–008 (Oct. 10, 2013), *available at http://pcaobus.org/Rules/Rulemaking/Docket036/PCAOB_Release_2013_008.pdf.*

[715] *Compare* 17 CFR 240.17a–5(g), *with* paragraph (f) of proposed Rule 18a–7.

[716] *See* paragraph (f) of proposed Rule 18a–7.

[717] *See* 17 CFR 240.17a–5(h). The term *material weakness* is defined with regard to the compliance report and, therefore, applies only to a broker-dealer that files a compliance report

[718] *See* 17 CFR 240.17a–5(h). *See also* 17 CFR 240.15c3–1(a)(6)(iv)(B), (a)(6)(v), (a)(7)(ii), (c)(2)(x)(C)(*1*), and (e); 17 CFR 240.15c3–1d(c)(2); 17 CFR 240.15c3–3(i); 17 CFR 240.17a–11. Notifications under Rule 17a–11 also must be filed with the CFTC if the broker-dealer is registered dually registered as a futures commission merchant with the CFTC. *See* 17 CFR 240.17a–11(g).

[719] *See* 17 CFR 240.17a–5(h).

notification under Rule 15c3–1, Rule 15c3–3, or Rule 17a–11, or any material weaknesses.[720] If the broker-dealer filed a notification, the report from the accountant must detail the aspects of the notification of the broker-dealer with which the accountant does not agree.[721]

The Commission is proposing to amend paragraph (h) of Rule 17a–5 to add references to proposed Rule 18a–4 to the references to Rule 15c3–1, Rule 15c3–3, and Rule 17a–13.[722] Thus, the independent public accountant would need to notify the broker-dealer if the accountant determines the broker-dealer is not in compliance with proposed Rule 18a–4.[723] Depending on the nature of the noncompliance, the broker-dealer may need to provide notification to the Commission in accordance with Rule 17a–11.[724]

The Commission is proposing to include parallel notification requirements in proposed Rule 18a–7 applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled on paragraph (h) of Rule 17a–5, as proposed to be amended.[725] Because stand-alone SBSDs and stand-alone MSBSPs would be subject to different rules, paragraph (g) of proposed Rule 18a–7 would contain separate provisions for each type of registrant.[726]

Paragraph (g)(1) would apply to stand-alone SBSDs.[727] Under this paragraph, the independent public accountant of a stand-alone SBSD would be required to notify the SBSD if the accountant determines that the SBSD is not in compliance with proposed Rules 18a–1, 18a–4, or 18a–9 or that any material weaknesses exist.[728] Consequently, the independent public accountant would need to provide notice to a stand-alone SBSD regarding noncompliance with requirements that parallel the requirements for which an independent public accountant must provide notice to a broker-dealer under paragraph (h) of Rule 17a–5.[729] Further, the independent public accountant would need to provide notice of a material weakness just as a broker-dealer's independent public accountant must provide notice of a material weakness.[730] Like Rule 17a–5, the receipt by a stand-alone SBSD of a notice would trigger the requirement for the SBSD to notify the Commission if the noncompliance requires notification under Rule 18a–8 or if the notice concerns a material weakness and to provide a copy of the notice to the accountant.[731] Further, the accountant would be required to notify the Commission if the accountant does not receive a copy of the notice or if the accountant disagrees with the notice.[732]

Paragraph (g)(2) of proposed Rule 18a–7 would apply to stand-alone MSBSPs.[733] Because the Commission is not proposing that MSBSPs be subject to proposed Rule 18a–4, proposed Rule 18a–9, or the requirement to file a compliance report, the notification triggers in paragraph (g)(2) would be limited to noncompliance with the proposed Rule 18a–2 (the proposed tentative net worth standard for stand-alone MSBSPs).[734] Like Rule 17a–5 and paragraph (g)(1) of proposed Rule 18a–7, the receipt by a stand-alone MSBSP of a notice of noncompliance with proposed Rule 18a–2 would trigger the requirement for the MSBSP to notify the Commission under Rule 18a–8 and to provide a copy of the notice to the independent public accountant.[735] Further, the accountant would be required to notify the Commission if the accountant does not receive a copy of the notice or if the accountant disagrees with the notice.[736]

Reports of the Independent Public Accountant

Under the recent amendments to Rule 17a–5, Paragraph (i) of the rule prescribes requirements for the reports of the independent public accountant covering the broker-dealer's annual reports, including: (1) Technical requirements; [737] (2) required representations; [738] (3) the opinions or conclusions to be expressed in the accountant's reports; [739] and (4) requirements related to matters to which the accountant takes exception.[740]

As broker-dealers dually registered as SBSDs or MSBSPs, the independent public accountants of these registrants will need to prepare reports covering the registrant's financial report and compliance report pursuant to the requirements prescribed in paragraph (i) of Rule 17a–5.

The Commission is proposing to include parallel independent public accountant report requirements in proposed Rule 18a–7 applicable to

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[720] *See id.*

[721] *See id.*

[722] *See* paragraph (h) of Rule 17a–5, as proposed to be amended.

[723] *See id.*

[724] *See id.* As discussed below in section II.C.2. of this release, the Commission is proposing to amend Rule 17a–11 to require notification to the Commission if a broker-dealer SBSD fails to make a required deposit into its reserve account under paragraph (c) of proposed Rule 18a–4.

[725] *Compare* paragraph (h) of Rule 17a–5, as proposed to be amended, *with* paragraph (g) of proposed Rule 18a–7.

[726] *See* paragraphs (g)(1)–(2) of proposed Rule 18a–7.

[727] *See* paragraph (g)(1) of proposed Rule 18a–7.

[728] *See id.*

[729] *Compare* 17 CFR 240.17a–5(h), *with* paragraph (g)(1) of proposed Rule 18a–7. As discussed above, proposed Rules 18a–1 and 18a–4 are modeled on Rules 15c3–1 and 15c3–3, respectively. *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70217–70257, 70274–70288. As discussed below in section II.C.2. of this release, proposed Rule 18a–8 is modeled on Rule 17a–11 (the broker-dealer notification rule). Stand-alone SBSDs would not be subject to an Account Statement Rule.

[730] *Compare* 17 CFR 240.17a–5(h), *with* paragraph (g)(1) of proposed Rule 18a–7. As discussed above, the definition of the term *material weakness* in proposed Rule 18a–7 is modeled on the definition of the term *material weakness* in Rule 17a–5. *Compare* 17 CFR 240.17a–5(d)(3)(iii), *with* paragraph (c)(3)(iii) of proposed Rule 18a–7.

[731] *Compare* 17 CFR 240.17a–5(h), *with* paragraph (g)(1) of proposed Rule 18a–7.

[732] *See* paragraph (g)(1) of proposed Rule 18a–7.

[733] *See* paragraph (g)(2) of proposed Rule 18a–7.

[734] *See id.* As discussed above, the concept of material weakness applies in the context of the filing of the compliance report and the report of the independent public accountant covering the compliance report.

[735] *See* paragraph (g)(2) of proposed Rule 18a–7. As discussed below in section II.C.2. of this release, proposed Rule 18a–8 would require a stand-alone MSBSP to provide notice to the Commission if the firm receives notice of noncompliance with proposed Rule 18a–2 or determines that it is not in compliance with proposed Rule 18a–2.

[736] *See* paragraph (g)(2) of proposed Rule 18a–7.

[737] *See* 17 CFR 240.17a–5(i)(1). Paragraph (i)(1) of Rule 17a–5 provides that the report of the independent public accountant must: (1) Be dated; (2) be signed manually; (3) indicate the city and state where issued; and (iv) identify without detailed enumeration the items covered by the report. *See id.*

[738] *See* 17 CFR 240.17a–5(i)(2). Paragraph (i)(2) provides that the report of the independent public accountant must: (1) State whether the examinations or review, as applicable, were made in accordance with standards of the PCAOB; and (2) identify any examination and, if applicable, review procedures deemed necessary by the independent public accountant under the circumstances of the particular case that have been omitted and the reason for their omission. *See id.* The paragraph further provides that nothing in Rule 17a–5 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 or review made for the purpose of expressing the opinions or conclusions required under Rule 17a–5. *See id.*

[739] *See* 17 CFR 240.17a–5(i)(3). Paragraph (i)(3) provides that the report of the independent public accountant must state clearly: (1) The opinion of the independent public accountant with respect to the financial report and the accounting principles and practices reflected in that report; (2) the opinion of the independent public accountant with respect to the financial report as to the consistency of the application of the accounting principles, or as to any changes in those principles, that have a material effect on the financial statements; and (3)(i) the opinion of the independent public accountant with respect to certain statements in the compliance report; or (ii) the conclusion of the independent public accountant with respect to certain statements in the exemption report. *See id.*

[740] *See* 17 CFR 240.17a–5(i)(4). Paragraph (i)(4) provides that 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 must be given.

stand-alone SBSDs and stand-alone MSBSPs that are modeled on paragraph (i) of Rule 17a–5.[741] Specifically, paragraph (h) of proposed Rule 18a–7 prescribes parallel requirements for the reports of the independent public accountant covering the stand-alone SBSD's or stand-alone MSBSP's annual reports, namely: (1) Technical requirements;[742] (2) required representations;[743] (3) the opinions or conclusions to be expressed in the accountant's reports;[744] and (4) requirements related to matters to which the accountant takes exception.[745] The requirements in paragraph (h) of proposed Rule 18a–7 would not include the requirements relating to the review engagement with respect to the exemption report because, as discussed above, stand-alone SBSDs and stand-alone MSBSPs would not file exemption reports as part of their annual reports.[746]

Extensions and Exemptions

Paragraph (m) of Rule 17a–5 governs the granting of extensions of time to comply with the requirements of Rule 17a–5 and the granting of exemptions from complying with the requirements of the rule, and also provides two self-executing exemptions from complying with Rule 17a–5 for certain types of broker-dealers.[747] As broker-dealers, dually registered SBSDs or MSBSPs will be able to seek extensions and exemptions under the provisions of paragraph (m).

The Commission is proposing to include a parallel extension and exemption provision in proposed Rule 18a–7 applicable to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs that is modeled on paragraph (m) of Rule 17a–5, but that only provides that the Commission may grant extensions or exemptions.[748] Specifically, paragraph (i) of proposed Rule 18a–7 would provide that upon written application by a stand-alone SBSD or stand-alone MSBSP to the Commission or on its own motion, the Commission may grant an extension of time or an exemption from any of the requirements of proposed Rule 18a–7 either unconditionally or on specified terms and conditions.[749]

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.[750] 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.[751] As broker-dealers, dually registered broker-dealer SBSDs and broker-dealer MSBSPs will be required to file the notices of changes in fiscal years and obtain approvals from their DEAs as prescribed in paragraph (n).

The Commission is proposing to include a parallel change in fiscal year requirement in proposed Rule 18a–7 applicable to stand-alone SBSDs and stand-alone MSBSPs that is modeled on paragraph (n) of Rule 17a–5, but that only provides that the Commission may approve a change in the filing period for the annual reports.[752] Specifically, paragraph (j)(1) of proposed Rule 18a–7 would provide that, in the event any stand-alone SBSD or stand-alone MSBSP 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 SBSD or MSBSP has its principal place of business, a notice of such change.[753] Paragraph (j)(2) would provide that the notice must contain a detailed explanation of the reasons for the change and that any change in the filing period for the annual reports must be approved in writing by the Commission.[754]

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 other parts of Rule 17a–5.[755] As broker-dealers, dually registered broker-dealer SBSDs and broker-dealer MSBSPs will be required to comply with the filing requirements prescribed in paragraph (o).

The Commission is proposing to include a parallel filing requirement in proposed Rule 18a–7 applicable to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs that mirrors paragraph (o) of Rule 17a–5.[756] Specifically, paragraph (k) of proposed Rule 18a–7 would provide that for purposes of the filing requirements in the rule, 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 the rule which is applicable.[757]

Request for Comment

The Commission generally requests comment on the proposed amendments to Rule 17a–5 and proposed Rule 18a–7. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Will the majority of stand-alone SBSDs apply to use internal models to calculate net capital? If not, what portion of stand-alone SBSDs will apply to use internal models?

[741] *Compare* 17 CFR 240.17a–5(i), *with* paragraph (h) of proposed Rule 18a–7.

[742] *Compare* 17 CFR 240.17a–5(i)(1), *with* paragraph (h)(1) of proposed Rule 18a–7.

[743] *Compare* 17 CFR 240.17a–5(i)(2), *with* paragraph (h)(2) of proposed Rule 18a–7.

[744] *Compare* 17 CFR 240.17a–5(i)(3), *with* paragraph (h)(3) of proposed Rule 18a–7.

[745] *Compare* 17 CFR 240.17a–5(i)(4), *with* paragraph (h)(4) of proposed Rule 18a–7.

[746] *See* paragraph (h) of proposed Rule 18a–7.

[747] *See* 17 CFR 240.17a–5(m). Paragraph (m)(1) of Rule 17a–5 provides that a broker-dealer's DEA may extend the period for filing the annual reports and requires the DEA to maintain a record of each granted extension. *See* 17 CFR 240.17a–5(m)(1). Paragraph (m)(2) exempts from the requirements of Rule 17a–5 entities that are: (1) *banks* or *insurance companies* as those terms defined in the Exchange Act; (2) are registered as broker-dealers to sell variable contracts; and (3) are exempt from Rule 15c3–1. *See* 17 CFR 240.17a–5(m)(2). Paragraph (m)(3) of Rule 17a–5 provides that the Commission may grant an extension of time or an exemption, upon written request of a national securities exchange, registered national securities association or the broker-dealer, from any of the requirements of Rule 17a–5 either unconditionally or on specified terms and conditions. *See* 17 CFR 240.17a–5(m)(3). Paragraph (m)(4) of Rule 17a–5 exempts from the requirements of Rule 17a–5 entities registered as broker-dealers under section 15(b)(11)(A) of the Exchange Act the purpose of effecting transactions in security futures products. *See* 17 CFR 240.17a–5(m)(4).

[748] *Compare* 17 CFR 240.17a–5(m), *with* paragraph (i) of proposed Rule 18a–7. As discussed above in section II.B.2. of this release, bank SBSDs and bank MSBSPs would be required to file proposed Form SBS on a quarterly basis. These types of registrants would be able to use the provisions of paragraph (i) of proposed Rule 18a–7 to seek extensions and exemptions from the provisions of the rule relating to the filing of proposed Form SBS.

[749] *See* paragraph (i) of proposed Rule 18a–7. Paragraph (i) of proposed Rule 18a–7 does not include the self-executing exemption in paragraph (m)(2) of Rule 17a–5 (applicable to banks and insurance companies registered as broker-dealers to sell variable contracts) and in paragraph (m)(4) of Rule 17a–5 (applicable to broker-dealers only effecting transactions in security futures products). Stand-alone SBSDs and stand-alone MSBSPs would not qualify for these exemptions because, among other things, they would engage in a broader range of activities than those permitted of entities that may use the exemptions.

[750] *See* 17 CFR 240.17a–5(n)(1).

[751] *See* 17 CFR 240.17a–5(n)(2).

[752] *Compare* 17 CFR 240.17a–5(n), *with* paragraph (j) of proposed Rule 18a–7.

[753] *See* paragraph (j)(1) of proposed Rule 18a–7.

[754] *See* paragraph (j)(2) of proposed Rule 18a–7.

[755] *See* 17 CFR 240.17a–5(o).

[756] *Compare* 17 CFR 240.17a–5(o), *with* paragraph (k) of proposed Rule 18a–7.

[757] *See* paragraph (k) of proposed Rule 18a–7.

2. Paragraph (j)(2) of proposed Rule 18a–7 would require the Commission to approve a change in the fiscal year of a stand-alone SBSD or stand-alone MSBSP. Should the rule instead provide that a stand-alone SBSD or stand-alone MSBSP may provide notice to the Commission of a change in fiscal year and that the notice will be deemed approved by the Commission unless the Commission rejects the change within a prescribed period of time such as 30, 60, or 90 days? Are there any other alternative approval mechanisms the Commission should consider?

3. Under the recently adopted amendments to Rule 17a–5, paragraphs (f)(2)(ii)(F) and (G) require each clearing broker-dealer to include a representation in its statement regarding its independent public accountant that the broker-dealer agrees to allow Commission and DEA examination staff to review the audit documentation associated with its annual audit reports required under Rule 17a–5 and to allow its independent public accountant to discuss findings relating to the audit reports with Commission and DEA examination staff if requested for the purposes of an examination of the broker-dealer. Should this requirement apply to stand-alone SBSDs? Explain why or why not.

4. Will entities already registered with the Commission as investment advisers, but not as broker-dealers, also register with the Commission as SBSDs? If so, would the compliance report and the independent public accountant's report based on an examination of the compliance report be sufficient to satisfy the requirement that certain investment advisers obtain an internal control report pursuant to Rule 206(4)–2 under the Investment Advisers Act of 1940?

5. Could there be broker-dealer SBSDs that claim an exemption from Rule 15c3–3, but that would be subject to Rule 18a–4? Please provide data to support the answer. If there would be a broker-dealer SBSD that claims an exemption from Rule 15c3–3 but would be subject to Rule 18a–4, should the firm submit an exemption report under paragraph (d)(1)(i)(B)(*2*) relating to its exemption from Rule 15c3–3 and also submit a compliance report under paragraph (d)(1)(i)(B)(*1*) of Rule 17a–5 relating to its compliance with Rule 18a–4? Please explain why or why not.

6. Paragraph (b)(1) of proposed Rule 18a–7 would require each nonbank stand-alone SBSD and nonbank stand-alone MSBSP to make certain documents publicly available on its Web site within ten business days after the date the firm is required to file its annual reports with the Commission. Should firms be given more or less time than ten business days to post the requisite documents on their Web sites? Explain why or why not.

7. Paragraph (b)(2) of proposed Rule 18a–7 would require each nonbank stand-alone SBSD and nonbank stand-alone MSBSP to make publicly available on its Web site unaudited statements as of the date that is six months after the date of the most recent audited statements filed with the Commission. These reports would need to be made publicly available within thirty calendar days of the date of the statements. Should firms be given more or less time than thirty calendar days to post their unaudited financial statements on their Web sites? Explain why or why not.

b. Additional Proposed Amendments to Rule 17a–5

The Commission is proposing several amendments to Rule 17a–5 to eliminate obsolete text, improve readability, and modernize terminology. The Commission is proposing a global change that would replace the use of the word ''shall'' in the rule with the word ''must'' or ''will'' where appropriate.[758] The Commission also proposes to make certain stylistic, corrective, and punctuation amendments to improve Rule 17a–5's readability.[759]

As a consequence of the proposed deletion of current paragraph (a)(1) of Rule 17a–5, paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) would be redesignated paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii), respectively (and the cross-references to these paragraphs would also be updated accordingly). Further, as discussed above, the Commission is proposing to add a new paragraph (a)(1)(iv) to Rule 17a–5. As a consequence of the proposed deletion of paragraph (a)(1) and addition of paragraph (a)(1)(iv), paragraph (a)(2)(iv) would be redesignated paragraph (a)(1)(v). Further, as a consequence of the deletion of paragraph (a)(1), paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) of Rule 17a–5 would be redesignated paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6), respectively (and the cross-references to these paragraphs would also be updated accordingly).

The Commission is proposing to amend 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. Pursuant to this amendment, the DEA must provide this information promptly to the Commission after it is obtained from the broker-dealers, which would facilitate the Commission's monitoring of broker-dealer custody practices.

Instead of grouping the ANC reports required by paragraph (a)(5) by the applicable timeframe, the Commission is proposing to specify the applicable timeframe in each paragraph requiring an ANC report to be filed. As a result, the numbering within paragraph (a)(5) of Rule 17a–5, as proposed to be amended, would be largely restructured due to the consolidation of paragraph (a)(5)(i)(A) into paragraph (a)(5)(i), and due to the elimination of certain sublevels to improve the paragraph's organization.

As discussed above, the Commission is proposing to add to paragraph (e)(2) of Rule 17a–5 a reference to Part III of Form X–17A–5, which contains the required oath or affirmation. Thus, the Commission does not believe it is necessary to identify the content of the oath or affirmation, and proposes to

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[758] The proposed amendments would replace the word ''shall'' with the word ''must'' or ''will'' in the following paragraphs of Rule 17a–5, as proposed to be amended: (a)(1)(v), (a)(2), (a)(3), (a)(6), (b)(1), (b)(3), (b)(4), (b)(5), (c)(1), (c)(2), (c)(2)(i), (c)(2)(ii), (c)(3), (c)(4)(iii), (e)(3), note to paragraph (h), (k), (l), (m)(1), (m)(2), (m)(4), (n)(2), and (o). *See* Rule 17a–5, as proposed to be amended.

[759] The Commission proposes the following stylistic and corrective changes to Rule 17a–5, as proposed to be amended: (1) Clarifying in paragraph (a)(5) that ANC broker-dealers must file additional reports ''with the Commission''; (2) replacing ''monthly'' with ''on a monthly basis'' in paragraph (a)(1)(v); (3) replacing ''10 largest commitments'' with ''ten largest commitments'' in paragraph (a)(5)(v)(C); (4) replacing ''broker or dealer's'' with ''broker's or dealer's'' in paragraphs (a)(5)(v)(D)–(G); (5) cross-referencing ''paragraphs (c)(1) and (c)(2)'' and ''paragraphs (c)(2)(i) and (c)(2)(ii)'' instead of ''paragraphs (c)(1) and (2)'' and ''paragraphs (c)(2)(i) and (ii)'' in paragraph (c)(3); (6) cross-referencing ''paragraphs (c)(2)(iii) and (c)(2)(iv)'' instead of ''paragraphs (c)(2)(iii) and (iv)'' in paragraph (c)(5)(i)(C); (9) eliminating the quotation marks around the defined term ''customer'' in paragraph (c)(4), and instead italicizing the defined term if it is not already italicized; (7) replacing the phrase ''Home page'' with the phrase ''home page'' in paragraph (c)(5)(iii)(C); (8) referring to a broker-dealer's annual report in the singular instead of the plural in paragraph (e)(1)(ii) by replacing the phrase ''annual reports'', and the words ''are'', and ''reports'' with the phrase ''an annual report'', the word ''is'', and the phrase ''a report'', respectively; (9) adding the word ''the'' before the phrase ''independent public accountant does not agree'' in paragraph (f)(3)(v)(B); (10) removing the phrase ''by telegram'' in the last sentence of the Note to paragraph (h); (11) adding the word ''Reserved'' in brackets in paragraph (j); (12) replacing the phrase ''Division of Market Regulation'' with the phrase ''Division of Trading and Markets'' in paragraph (k); (13) replacing the phrase ''Securities Exchange Act of 1934'' with the word ''Act'' in paragraph (l); (14) removing the U.S.C. citations from paragraphs (m)(2) and (m)(4), since the rule already cites to the applicable section of the Exchange Act; and (15) replacing the phrase ''§ 240.17a–5'' with the phrase ''this section'' in paragraph (o).

remove the required text of the oath or affirmation in the rule text. The Commission also proposes to add clarity by specifying that the oath or affirmation is ''made in Part III of Form X–17A–5''.

Since the recently adopted amendments to Rule 17a–5 require a more diverse range of annual filings, the Commission is proposing to amend paragraph (e)(2) of Rule 17a–5 to reference ''the annual reports'' instead of ''the financial report''.

Reference is made in paragraph (e)(3) to a ''member'' of a national securities exchange as a distinct class of registrant in addition to a ''broker'' and ''dealer''. The Commission is proposing to remove this reference to a ''member'' given that the rule applies to brokers-dealers, which would include a member of a national securities exchange that is a broker-dealer.

Request for Comment

The Commission generally requests comment on these additional proposed amendments to Rule 17a–5, including comment on whether any of the proposed amendments would result in substantive changes to the requirements applicable to broker-dealers.

C. Notification

1. Introduction

As discussed above, section 764 of the Dodd-Frank Act added section 15F to the Exchange Act.[760] Section 15F(f)(2) provides that the Commission shall adopt rules governing reporting for SBSDs and MSBSPs.[761] Further, 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.[762] In addition, the Commission also has concurrent authority under section 17(a)(1) of the Exchange Act to prescribe reporting requirements for broker-dealers.[763]

After considering the anticipated business activities of SBSDs and MSBSPs, the Commission is proposing to establish a notification program for these registrants under sections 15F(f) and 17(a) of the Exchange Act that is modeled on the notification program for broker-dealers codified in Rule 17a–11.[764] 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 that the notice must take.[765]

Rule 17a–11 was promulgated in the aftermath of the securities industry ''paper work crisis'' of 1967–1970.[766] This crisis prompted the Commission to undertake a study of unsafe and unsound practices of brokers and dealers.[767] The study found, among other things, that early warning signals required of broker-dealers at the time were inadequate to foretell financial and operational difficulties in a reliable and timely manner.[768] This diminished the Commission's ability to take effective proactive steps to respond when a broker-dealer was experiencing or was likely to experience financial difficulty.[769] In response, the Commission adopted Rule 17a–11.[770] This rule requires a broker-dealer to notify the Commission when, among other things, its net capital falls below 120% of the minimum required amount or below the minimum required amount, or when the firm fails to make and keep current the books and records required by Commission rules.[771]

The Commission is proposing to establish notification requirements applicable to SBSDs and MSBSPs in order to require the timely notification to the Commission of information about potential problems at these registrants. The Commission would use the notifications to respond, when necessary, to financial or operational problems at a particular SBSD or MSBSP by, for example, heightening its supervision of the firm.

Under the proposed notification program for SBSDs and MSBSPs, broker-dealer SBSDs and broker-dealer MSBSPs—as broker-dealers—would be subject to Rule 17a–11.[772] The Commission is proposing amendments to this rule to account for a broker-dealer that is dually registered as an SBSD or MSBSP. Stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be subject to proposed Rule 18a–8, which is modeled on Rule 17a–11, as proposed to be amended. Proposed Rule 18a–8 would not include a parallel requirement for every requirement in Rule 17a–11.[773]

For the reasons discussed above in section I. of this release, the proposed notification requirements for bank SBSDs and bank MSBSPs are substantially narrower in scope than the notification requirements for broker-dealer SBSDs, broker-dealer MSBSPs, stand-alone SBSDs, and stand-alone MSBSPs. Moreover, the proposed notification requirements applicable to bank SBSDs and bank MSBSPs, in one case, parallel a notification requirement the prudential regulators have established for banks.[774] Thus, bank SBSDs and bank MSBSPs would be able to use the same information reported to the prudential regulators to comply with the proposed requirement.

2. Amendments to Rule 17a–11 and Proposed Rule 18a–8

Undesignated Introductory Paragraph

Rule 17a–11, as proposed to be amended, would contain an undesignated introductory paragraph explaining that the rule applies to a broker-dealer, including a broker-dealer dually registered with the Commission as an SBSD or MSBSP.[775] The note

[760] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10.

[761] *See* 15 U.S.C. 78o–10(f)(2).

[762] *See* 15 U.S.C. 78o–10(f)(1)(A).

[763] *See* 15 U.S.C. 78q(a)(1).

[764] *See* 17 CFR 240.17a–11. As discussed below, the Commission also is proposing a parallel notification requirement applicable to stand-alone SBSDs that is modeled on a broker-dealer notification requirement in paragraph (i) of Rule 15c3–3. *See* 17 CFR 240.15c3–3(i).

[765] *See* 17 CFR 240.17a–11.

[766] *See Study of Unsafe and Unsound Practices of Brokers and Dealers.*

[767] *See id.*

[768] *See id.* at 2.

[769] *See id.* at 12.

[770] *See Prompt Notice of Net Capital or Recordkeeping Violations,* 36 FR 14725. *See also Prompt Notice of Net Capital or Record Keeping Violations,* Exchange Act Release No. 9128 (Apr. 20, 1971), 36 FR 7972 (Apr. 28, 1971) (proposing Rule 17a–11) (''Experience during the past 3 years has demonstrated that neither the Commission nor any self-regulatory body is receiving an adequate and timely flow of information on the financial and operational condition of broker-dealers. Accordingly, there is a need for a Commission rule which would impose upon firms (and, secondarily, upon the self-regulatory bodies themselves) a duty to report net capital and operational problems.'').

[771] *See* 17 CFR 240.17a–11.

[772] *See id.*

[773] The Commission is not proposing to include in proposed Rule 18a–8 notice requirements that would parallel the notice requirements in paragraphs (c)(1) and (2) of Rule 17a–11 because these requirements relate to ratios in Rule 15c3–1 (the capital rule for broker-dealers) that are not incorporated into proposed Rule 18a–1 (the proposed capital standard for stand-alone SBSDs) or proposed Rule 18a–2 (the proposed capital standard for stand-alone MSBSPs). The Commission is not proposing to include in proposed Rule 18a–8 a notice requirement that would parallel the notice requirement in paragraph (f) of Rule 17a–11 because this requirement generally arises in the context of an Exchange's supervision of a broker-dealer as an SRO of the firm. The Commission is not proposing to include in proposed Rule 18a–8 a provision that would parallel the provision in paragraph (h) of Rule 17a–11 because this provision cross-references notice requirements in other Commission rules that would not apply to a stand-alone SBSD or stand-alone MSBSP. Finally, the Commission is not proposing to include in proposed Rule 18a–8 a provision that would parallel the provision in paragraph (i) of Rule 17a–11 because this provision establishes an exemption for a special class of broker-dealer.

[774] *See* paragraph (c) of proposed Rule 18a–8.

[775] *See* undesignated introductory paragraph of Rule 17a–11, as proposed to be amended.

further explains that an SBSD or MSBSP that is not dually registered as a broker-dealer (*i.e.,* a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP) is subject to the notification requirements under proposed Rule 18a–8.[776] Further, the Commission is proposing 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.[777] This text would be redundant, given the proposed undesignated introductory paragraph of Rule 17a–5.[778]

Similarly, proposed Rule 18a–8 would contain an undesignated introductory paragraph explaining that the rule applies to an SBSD or an MSBSP that is not registered as a broker-dealer.[779] The note further explains that a broker-dealer that is dually registered as an SBSD or MSBSP is subject to the notification requirements under Rule 17a–11.[780]

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.[781] Specifically, paragraph (b)(1) requires notification to the Commission when a broker-dealer's net capital falls below the required level the same day it discovers or is notified by the Commission or its DEA of the net capital deficiency.[782] If the broker-dealer disagrees with the Commission or the DEA that a net capital deficiency exists, the firm can indicate in the notice the reasons for disagreeing. Paragraph (b)(2) of Rule 17a–11 requires an OTC derivatives dealer or an ANC broker-dealer to also notify the Commission when its tentative net capital falls below the minimum required for these types of broker-dealers.[783] In either case, the notice must specify the broker-dealer's net capital or tentative net capital requirement and its current amount of net capital or tentative net capital.[784] As broker-dealers, dually registered SBSDs and MSBSPs will be required to comply with the existing notification requirements.

The Commission is proposing to include parallel capital deficiency notification requirements in proposed Rule 18a–8 applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled on the requirements in paragraph (b) of Rule 17a–5.[785] Specifically, paragraph (a)(1)(i) of proposed Rule 18a–8 would require a stand-alone SBSD to give notice to the Commission on the same day if the firm's net capital declines below the minimum amount required pursuant to proposed Rule 18a–1 or if the Commission informs the stand-alone SBSD that it is or has been in violation of proposed Rule 18a–1.[786] The notice would need to specify the stand-alone SBSD's net capital requirement and its current amount of net capital.[787] Further, if the notice is triggered by the Commission informing the stand-alone SBSD that it is or has been in violation of proposed Rule 18a–1 and the SBSD disagrees, the SBSD could specify the reasons for the disagreement in the notice.[788]

Paragraph (a)(1)(ii) of proposed Rule 18a–8 would require a stand-alone ANC SBSD to give notice to the Commission on the same day if its tentative net capital declines below the minimum amount required pursuant to proposed Rule 18a–1 or if the Commission informs the stand-alone ANC SBSD that is or has been in violation of proposed Rule 18a–1.[789] The notice would need to specify the stand-alone ANC SBSD's tentative net capital requirement and its current amount of tentative net capital.[790] Further, if the notice is triggered by the Commission informing the stand-alone ANC SBSD that it is or has been in violation of proposed Rule 18a–1 and the SBSD disagrees, the SBSD could specify the reasons for the disagreement in the notice.[791]

Paragraph (a)(2) of proposed Rule 18a–8 would require a stand-alone MSBSP to give notice to the Commission on the same day if it fails to maintain a positive tangible net worth pursuant to proposed Rule 18a–2 or if the Commission informs the stand-alone MSBSP that it is or has been in violation of proposed Rule 18a–2.[792] The notice would need to specify the extent to which the firm has failed to maintain positive tangible net worth. Further, if the notice is triggered by the Commission informing the stand-alone MSBSP that it is or has been in violation of proposed Rule 18a–2 and the MSBSP disagrees, the MSBSP could specify the reasons for the disagreement in the notice.

Early Warning of Potential Capital or Model Problem

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.[793] These

[776] *See id.*

[777] *See* 17 CFR 240.17a–11(a). As a consequence of this deletion, paragraphs (b), (c), (d), and (e) of Rule 17a–11 would be redesignated paragraphs (a), (b), (c), and (d), respectively. Further, as discussed below, the Commission is proposing to add two new notification provisions to Rule 17a–11 that would be codified in paragraphs (e) and (f) of the rule, as proposed to be amended. As a consequence of the deletion of paragraph (a) and addition of the two new provisions, paragraphs (f), (g), (h), and (i) would be redesignated paragraphs (g), (h), (i), and (j), respectively.

[778] *See* undesignated introductory paragraph of Rule 17a–11, as proposed to be amended.

[779] *See* undesignated introductory paragraph of proposed Rule 18a–8.

[780] *See id.*

[781] *See* 17 CFR 240.17a–11(b).

[782] *See* 17 CFR 240.17a–11(b)(1) . Rule 15c3–1 requires broker-dealers to maintain a minimum level of net capital (meaning highly liquid capital) at all times. *See* 17 CFR 240.15c3–1. The rule requires that a broker-dealer perform two calculations: (1) A computation of the minimum amount of net capital the broker-dealer must maintain; and (2) a computation of the amount of net capital the broker-dealer is maintaining. *See* 17 CFR 240.15c3–1(a) and (c)(2). As discussed above in sections II.A. and II.B.2.b. of this release, the minimum net capital requirement is the greater of a fixed-dollar amount specified in the rule and an amount determined by applying one of two financial ratios: The 15-to-1 aggregate indebtedness to net capital ratio or the 2% of aggregate debit items ratio. *See* 17 CFR 240.15c3–1(a).

[783] *See* 17 CFR 240.17a–11(b)(2).

[784] *See* 17 CFR 240.17a–11(b)(1) and (2). As discussed above, paragraph (b) of Rule 17a–11 would be redesignated paragraph (a). Further, as discussed below in section II.C.3. of this release, the Commission is proposing certain technical amendments to the text in paragraph (b), which would be contained in paragraph (a) of Rule 17a–11, as proposed to be amended.

[785] *Compare* 17 CFR 240.17a–11(b), *with* paragraph (a) of proposed Rule 18a–8.

[786] *See* paragraph (a)(1)(i) of proposed Rule 18a–8. Proposed Rule 18a–1—which is modeled on Rule 15c3–1—would specify minimum net capital requirements for stand-alone SBSDs. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70221–70230.

[787] *See* paragraph (a)(1)(i) of proposed Rule 18a–8.

[788] *See id.*

[789] *See* paragraph (a)(1)(ii) of proposed Rule 18a–8. Proposed Rule 18a–1 would specify minimum tentative net capital requirements for stand-alone ANC SBSDs. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70226–70227.

[790] *See* paragraph (a)(1)(ii) of proposed Rule 18a–8.

[791] *See id.*

[792] *See* paragraph (a)(2) of proposed Rule 18a–8. Proposed Rule 18a–2 would require stand-alone MSBSPs to maintain positive tangible net worth. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257. Under proposed Rule 18a–2, *tangible net worth* would be defined to mean the stand-alone MSBSP's net worth as determined in accordance with generally accepted accounting principles in the U.S., excluding goodwill and other intangible assets. *See id.*

[793] *See* 17 CFR 240.17a–11(c).

notices are designed to provide the Commission with ''early warning'' that the broker-dealer may experience financial difficulty. 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 its aggregate indebtedness is in excess of 1,200% of its net capital;[794]
- 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 Appendix A of Rule 15c3–3;[795]
- 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;[796]
- With respect to an OTC derivatives dealer, the occurrence of the fourth and each subsequent backtesting exception under Appendix F of Rule 15c3–1 during any 250 business day measurement period.[797]

As broker-dealers, dually registered SBSDs and MSBSPs will be required to comply with the existing notification requirements.[798] The Commission is proposing to add a new notification requirement in paragraph (c) applicable to broker-dealer MSBSPs. Specifically, paragraph (c)(5) of Rule 17a–3, as proposed to be amended, would require a broker-dealer MSBSP to notify the Commission when its level of tangible net worth falls below $20 million.[799]

The Commission also is proposing to include parallel early warning notification requirements in proposed Rule 18a–8 applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled on the requirements in paragraph (c) of Rule 17a–5.[800] Specifically, paragraph (b)(1) of proposed Rule 18a–8 would require a stand-alone SBSD to notify the Commission promptly (but within twenty-four hours) when the SBSD's net capital falls below 120% of the SBSD's required minimum tentative net capital.[801] Paragraph (b)(2) of proposed Rule 18a–8 would require a stand-alone ANC SBSD to notify the Commission when the SBSD's tentative net capital falls below 120% of the SBSD's required minimum net capital.[802] Paragraph (b)(3) of proposed Rule 18a–8 would require a stand-alone MSBSP to notify the Commission when its level of tangible net worth falls below $20 million.[803] Finally, paragraph (b)(4) of proposed Rule 18a–8 would require a stand-alone ANC SBSD to report the occurrence of the fourth and any subsequent backtesting exception performed pursuant to paragraph (d) of Rule 18a–1 during any 250 business day measurement period.[804]

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.[805] The definition of each capital category is based on capital measures under the bank capital standard and other factors.[806] A bank is required to notify its appropriate prudential regulator of adjustments to the bank's capital category that may have occurred 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.[807] Because these notices may indicate that a bank is in or approaching financial difficulty, the Commission is proposing to include a notification requirement in proposed Rule 18a–8 that would require a bank SBSD or a bank MSBSP 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.[808]

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.[809] The notice must specify the books and records which have not been made or which are

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[794] *See* 17 CFR 240.17a–11(c)(1). As discussed above, the minimum net capital requirement for certain types of broker-dealers 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* 17 CFR 240.15c3–1(a)(1)(i). 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.

[795] *See* 17 CFR 240.17a–11(c)(2). As discussed above, the minimum net capital requirement for certain types of broker-dealers 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* 17 CFR 240.15c3–1(a)(1)(ii). 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.

[796] *See* 17 CFR 240.17a–11(c)(3).

[797] *See* 17 CFR 240.17a–11(c)(4). OTC derivatives dealers (and ANC broker-dealers) take market risk charges when computing net capital that are determined using the VaR models instead of applying standardized haircuts. The amount of the VaR measure computed by the model must be multiplied by a factor of at least three but potentially a greater factor based on the number of exceptions to the measure resulting from quarterly backtesting exercises. A backtesting exception occurs when the ANC broker-dealer's actual one-day loss exceeds the amount estimated by its VaR model. Multiple backtesting exceptions can indicate a problem with the VaR model. *See, e.g.,* Basel Committee on Banking Supervision, *Supervisory framework for the use of ''backtesting'' in conjunction with the internal models approach to market risk capital requirements* (Jan. 1996), *available at http://www.bis.org/publ/bcbs22.pdf* (''The essence of all backtesting efforts is the comparison of actual trading results with model-generated risk measures. If this comparison is close enough, the backtest raises no issues regarding the quality of the risk measurement model. In some cases, however, the comparison uncovers sufficient differences that problems almost certainly must exist, either with the model or with the assumptions of the backtest. In between these two cases is a grey area where the test results are, on their own, inconclusive.'').

[798] As discussed above, paragraph (c) of Rule 17a–11 would be redesignated paragraph (b). Further, as discussed below in section II.C.3. of this release, the Commission is proposing certain largely technical amendments to the text in paragraph (c), which would be contained in paragraph (b) of Rule 17a–5, as proposed to be amended.

[799] *See* paragraph (b)(6) of Rule 17a–11, as proposed to be amended. As discussed above, proposed Rule 18a–2 would require nonbank MSBSP to maintain a positive tangible net equity. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257. The Commission, however, did not propose that a nonbank MSBSP be required to a minimum amount of positive net equity. *See id.* The CFTC proposed a $20 million fixed-dollar ''tangible net equity'' minimum requirement for swap dealers and major swap participants that are not FCMs *and are not* affiliated with a U.S. bank holding company. *See Capital Requirements of Swap Dealers and Major Swap Participants,* 78 FR 27827. Further, OTC derivatives dealers are required to maintain minimum net capital of $20 million. *See* 17 CFR 240.15c3–1(a)(5). In addition, the Commission has proposed a $20 million fixed-dollar minimum net capital requirement for stand-alone SBSDs. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70221–70227. The proposed $20 million early warning threshold for broker-dealer MSBSPs is based on these proposals and requirements.

[800] *Compare* 17 CFR 240.17a–11(c), *with* paragraph (b) of proposed Rule 18a–8.

[801] *See* paragraph (b)(1) of proposed Rule 18a–8.

[802] *See* paragraph (b)(2) of proposed Rule 18a–8.

[803] *See* paragraph (b)(3) of proposed Rule 18a–8.

[804] *See* paragraph (b)(4) of proposed Rule 18a–8.

[805] *See* 12 CFR 325.103; 12 CFR 6.4; 12 CFR 208.43.

[806] *See id.*

[807] *See* 12 CFR 6.3(c); 12 CFR 208.42(c); 12 CFR 325.102(c).

[808] *See* paragraph (b) of proposed Rule 18a–8.

[809] *See* 17 CFR 240.17a–11(d).

not current.[810] 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.[811] As broker-dealers, dually registered SBSDs and MSBSPs will be required to comply with the existing notification requirements in paragraph (d).[812]

The Commission is proposing to include a parallel books and records notification requirement in proposed Rule 18a–7 applicable to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs that is modeled on the requirement in paragraph (d) of Rule 17a–5.[813] Specifically, paragraph (d) of proposed Rule 18a–8 would require a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP that fails to make and keep current the books and records required under proposed Rule 18a–5 to give notice of this fact that same day and specify in the notice the books and records which have not been made or which are not current.[814] Further, these registrants would be required to transmit a report within 48 hours of the notice stating what the registrant has done or is doing to correct the situation.[815]

Material Weakness

The recently adopted amendments to paragraph (e) of Rule 17a–11 require a broker-dealer to provide notification about a *material weakness* as that term is defined in Rule 17a–5.[816] 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 stating what the broker-dealer has done or is doing to correct the situation.[817] As broker-dealers, dually registered broker-dealer SBSDs and broker-dealer MSBSPs will be required to comply with the existing notification requirements in paragraph (e).[818]

The Commission is proposing to include a parallel material weakness notification requirement in proposed Rule 18a–7 applicable to stand-alone SBSDs that is modeled on paragraph (e) of Rule 17a–11. [819] Specifically, paragraph (e) of Rule 18a–8 would provide that, whenever a stand-alone SBSD discovers or is notified by an independent public accountant of a *material weakness* as defined in Rule 18a–7, the SBSD 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 SBSD has done or is doing to correct the situation.[820]

Insufficient Liquidity Reserves

As discussed above in section II.A. of this release, the Commission has proposed amendments to Rule 15c3–1 that would establish liquidity stress test requirements for ANC broker-dealers, which would include ANC broker-dealer SBSDs.[821] Further, the Commission has proposed identical liquidity stress test requirements for stand-alone ANC SBSDs as part of the capital requirements for SBSDs.[822] Under the proposed liquidity stress test requirements, ANC broker-dealers, including ANC broker-dealer SBSDs, and stand-alone ANC SBSDs would be required, among other things, to: (1) perform a liquidity stress test at least monthly that takes into account certain assumed conditions lasting for thirty consecutive days; and (2) maintain at all times liquidity reserves based on the results of the liquidity stress test comprised of unencumbered cash or U.S. government securities.[823]

Given the importance to the health of a financial institution of maintaining adequate liquidity, the Commission is proposing a new notification requirement that would apply to ANC broker-dealers, including ANC broker-dealer SBSDs.[824] Specifically, paragraph (e) of Rule 17a–5, as proposed to be amended, would require an ANC broker-dealer to give immediate notice

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[810] *See id.*

[811] *See id.*

[812] As discussed above, paragraph (d) of Rule 17a–11 would be redesignated paragraph (c). Further, as discussed below in section II.C.3. of this release, the Commission is proposing certain technical amendments to the text in paragraph (d), which would be contained in paragraph (c) of Rule 17a–5, as proposed to be amended.

[813] *Compare* 17 CFR 240.17a–11(d), *with* paragraph (d) of proposed Rule 18a–8.

[814] *See* paragraph (d) of proposed Rule 18a–8. As discussed above in section II.A.2.a. of this release, proposed Rule 18a–5—which is modeled on Rule 17a–3—would require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to make and keep current certain records.

[815] *See* paragraph (d) of proposed Rule 18a–8.

[816] *See Broker-Dealer Reports,* 78 FR 51993. As discussed above in section II.B.3.a. of this release, under the recently adopted amendments to Rule 17a–5, the concept of material weakness is used for the purposes of the compliance report and the report of the independent public accountant covering the compliance report. *See* 17 CFR 240.17a–5(d)(3). A *material weakness* is defined in Rule 17a–5 to mean a deficiency, or a combination of deficiencies, in *Internal Control Over Compliance* (as that term is defined in the rule) such that there is a reasonable possibility that non-compliance with Rule 15c3–1 or paragraph (e) of Rule 15c3–3 will not be prevented or detected on a timely basis or that non-compliance to a material extent with Rule 15c3–3, except for paragraph (e), Rule 17a–13, or any Account Statement Rule will not be prevented or detected on a timely basis. *See* 17 CFR 240.17a–5(d)(3)(iii). The recently amended rule further provides that 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 Rule 15c3–1, Rule 15c3–3, Rule.17a–13, or any Account Statement Rule. *See id.* The term *Internal Control Over Compliance* means internal controls that have the objective of providing the broker-dealer with reasonable assurance that non-compliance with Rule 15c3–1, Rule 15c3–3, Rule 17a–13, or any Account Statement Rule will be prevented or detected on a timely basis. *See* 17 CFR 240.17a–5(d)(3)(ii).

[817] *See Broker-Dealer Reports,* 78 FR 51993. Paragraph (i) of Rule 17a-12 requires an OTC derivatives dealer to take the same steps when it discovers or is notified of a *material inadequacy* as defined in Rule 17a-12. Rule 17a-12—the reporting rule for OTC derivatives dealers—is similar to Rule 17a–5. *See* 17 CFR 240.17a-12. However, rather than using the concept of material weakness, Rule 17a-12 uses the concept of material inadequacy. *See id.* The Commission replaced the use of material inadequacy with material weakness in Rule 17a–5 through the recent amendments to the rule, which were designed, among other things, to (1) increase the focus of carrying broker-dealers and their independent public accountants on compliance, and internal control over compliance, with certain financial and custodial requirements; and (2) strengthen and clarify broker-dealer audit and reporting requirements in order to facilitate consistent compliance with these requirements. *See Broker-Dealer Reports,* 78 FR 51911. As discussed above in section II.B.3.a. of this release, the Commission is proposing to use the concept of material weakness in proposed Rule 18a–7.

[818] As discussed above, paragraph (e) of Rule 17a–11 would be redesignated paragraph (d). Further, as discussed below in section II.C.3. of this release, the Commission is proposing certain largely technical amendments to the text in paragraph (e), which would be contained in paragraph (d) of Rule 17a–5, as proposed to be amended.

[819] *Compare* 17 CFR 240.17a–11(e), *with* paragraph (e) of proposed Rule 18a–8. As discussed above in section II.B.3.a. of this release, stand-alone MSBSPs would not be required to file with the Commission a compliance report or a report of the independent public accountant covering the compliance report. Consequently, as the concept of material weakness is used in the context of these reports, the material weakness notification requirement would not apply or be relevant to stand-alone MSBSPs. Further, as discussed above in section II.B.3.a. of this release, bank SBSDs and bank MSBSPs would not be subject to the requirements in proposed Rule 18a–7 to file annual reports with the Commission. Consequently, the material weakness notification requirement would not apply or be relevant to these registrants.

[820] *See* paragraph (e) of proposed Rule 18a–8.

[821] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70252–70254.

[822] *See id.*

[823] *See id.*

[824] *See* paragraph (e) of Rule 17a–5, as proposed to be amended. As discussed above, current paragraph (e) of Rule 17a–5 would be redesignated paragraph (d).

in writing if the liquidity stress test conducted pursuant to Rule 15c3–1, as proposed to be amended, indicates that the amount of the firm's liquidity reserve is insufficient.[825] The Commission is proposing to include a parallel liquidity notification requirement in proposed Rule 18a–8 applicable to stand-alone ANC SBSDs.[826] The proposed liquidity notification requirements are designed to provide the Commission with notice of a liquidity shortfall at an ANC broker-dealer or stand-alone ANC SBSD that could impair the ability of the firm to withstand a liquidity crisis.

Failure To Make a Required Reserve Deposit

As discussed above in section II.A. of this release, Rule 15c3–3 requires a carrying broker-dealer to maintain a reserve of funds or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers, and proposed Rule 18a–4 would include a parallel requirement with respect to security-based swap customers applicable to SBSDs, including broker-dealer SBSDs.[827] 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.[828] Since a broker-dealer SBSD would be required to maintain a separate reserve account for its security-based swap customers under Rule 18a–4, the Commission is proposing a new notification requirement in Rule 17a–11 that would be triggered if a broker-dealer fails to make a required deposit into its security-based swap customer reserve account.[829] In addition, the Commission is proposing to include a parallel reserve account notification requirement in proposed Rule 18a–8 applicable to stand-alone SBSDs and bank SBSDs.[830]

Manner of Notification

Paragraph (g) of Rule 17a–11 provides that every notice or report required to be given or transmitted by the rule shall be given or transmitted to the principal office of the Commission in Washington, DC, the regional office of the Commission for the region in which the broker-dealer has its principal place of business, the DEA of which such broker-dealer is a member, and the CFTC if the broker-dealer is registered as an FCM.[831]

Paragraph (g) further provides that for the purposes of Rule 17a–11, notice shall be given or transmitted by telegraphic notice or facsimile transmission and that a report about how the broker-dealer is addressing a failure to make and keep current books and records or a material weakness may be transmitted by overnight delivery.[832] The Commission is proposing to amend this paragraph to no longer permit notice by telegraphic transmission, and instead to only allow notice by facsimile transmission.[833] This proposal recognizes that telegrams are no longer widely used in the U.S.,[834] and that Commission staff no longer receive Rule 17a–11 notices by telegram. As broker-dealers, dually registered broker-dealer SBSDs and broker-dealer MSBSPs will be required to give notice or transmit the notices and reports, including the proposed new notices, pursuant to the requirements specified in paragraph (g).[835]

The Commission is proposing to include a parallel manner of notification requirement in proposed Rule 18a–8 that is modeled on paragraph (g) of Rule 17a–11. [836] Specifically, paragraph (i) of proposed Rule 18a–8 would provide that a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP required to give notice or transmit a report under the rule would need to do so in the same manner as a broker-dealer under paragraph (g) of Rule 17a–11, except there would be no requirement to give notice or provide a report to a DEA as these registrants would not have DEAs.[837]

Request for Comment

The Commission generally requests comment on the proposed amendments to Rule 17a–11 and proposed Rule 18a–9. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following question:

1. Should paragraph (f) of Rule 17a–11 be amended to require a broker-dealer's DEA (in addition to a broker-dealer's national securities exchange or national securities association) to transmit notice to the Commission upon learning that a broker-dealer failed to send notice in accordance with Rule 17a–11? If so, explain why. If not, explain why not. For example, given the responsibilities of a DEA, is a DEA more likely to learn if a broker-dealer for which it serves as DEA has failed to send notice in accordance with Rule 17a–11 than a national securities exchange or national securities association of which the broker-dealer is a member? Commenters are asked to provide information and data about the costs and benefits of requiring the DEA to provide notice.

2. Rule 17a–11 is proposed to be amended to include new notification requirements applicable to broker-dealers (*e.g.,* requiring notice if the broker-dealer's liquidity stress test indicates that the amount of its liquidity reserve is insufficient). Consequently, this would expand the types of instances in which a national securities exchange or national securities association would be required to give notice under paragraph (g) of Rule 17a–11, as proposed to be amended, if the exchange or association learns that a broker-dealer has failed to do so under Rule 17a–11. Would this expansion materially increase the number of notices that would need to be sent by national securities exchanges and national securities associations under Rule 17a–11? If so, please explain why and quantify the increased burden

[825] *See* paragraph (e) of Rule 17a–11, as proposed to be amended. Current paragraph (f) of Rule 17a–11 provides that every national securities exchange or national securities association that learns that a member broker-dealer has failed to send notice or transmit a report as required by paragraphs (b), (c), (d), or (e) of Rule 17a–11, even after being advised by the securities exchange or the national securities association to send notice or transmit a report, shall immediately give notice of such failure in accordance with paragraph (g) of Rule 17a–11. *See* 17 CFR 240.17a–11(f). As discussed above, the Commission is proposing to redesignate current paragraph (f) as paragraph (g). Further, the Commission is proposing to replace the specific reference to ''paragraphs (b), (c), (d), or (e)'' of Rule 17a–11 in current paragraph (f) with a reference to ''this section''. This would incorporate all the notices required under Rule 17a–11, including notices that would be required under the new liquidity notification requirement. *See* paragraph (g) of Rule 17a–11, as proposed to be amended.

[826] *Compare* paragraph (e) of Rule 17a–11, as proposed to be amended, *with* paragraph (f) of proposed Rule 18a–8.

[827] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70282–70287.

[828] *See* 17 CFR 240.15c3–3(i).

[829] *See* paragraph (f) of Rule 17a–11, as proposed to be amended. As discussed above, current paragraph (f) of Rule 17a–5 would be redesignated paragraph (g).

[830] *Compare* paragraph (h) of Rule 17a–11, as proposed to be amended, *with* paragraph (g) of proposed Rule 18a–8.

[831] *See* 17 CFR 240.17a–11(g).

[832] *See id.*

[833] *See* paragraph (h) of Rule 17a–11, as proposed to be amended.

[834] *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).

[835] As discussed above, paragraph (g) of Rule 17a–11 would be redesignated paragraph (h). Further, as discussed below in section II.C.3. of this release, the Commission is proposing certain largely technical amendments to the text in paragraph (g), which would be contained in paragraph (h) of Rule 17a–5, as proposed to be amended.

[836] *Compare* 17 CFR 240.17a–11(g), *with* paragraph (h) of proposed Rule 18a–8.

[837] *See* paragraph (h) of proposed Rule 18a–8.

resulting from the increased number of notices that would need to be sent.

3. Additional Proposed Amendments to Rule 17a–11

The Commission is proposing several amendments to Rule 17a–11 to eliminate obsolete text, improve readability, and modernize terminology. The Commission is proposing a global change to Rule 17a–11 that would replace the use of the word ''shall'' in the rule with the word ''must'' or ''will'' where appropriate.[838] The Commission also proposes to make certain stylistic, corrective, and punctuation amendments to improve Rule 17a–11's readability.[839]

As a consequence of the proposed deletion of paragraph (a), paragraphs (b), (c), (d), and (e) of Rule 17a–11 would be redesignated paragraphs (a), (b), (c), and (d), respectively. Further, as discussed above, the Commission is proposing to add two new notification provisions to Rule 17a–11 that would be codified in paragraphs (e) and (f) of the rule, as proposed to be amended. As a consequence of the deletion of paragraph (a) and the addition of the two new provisions, paragraphs (f), (g), (h), and (i) would be redesignated paragraphs (g), (h), (i), and (j), respectively. Similarly, due to the proposed addition and deletion of paragraphs, the Commission is proposing a global change that would replace the cross-references to ''paragraph (g)'' of Rule 17a–11 with ''paragraph (h)'' of Rule 17a–11.[840]

Reference is made in paragraph (g) to a ''member'' of a national securities exchange as a distinct class of registrant in addition to a ''broker'' and ''dealer''. The Commission is proposing to remove this reference to a ''member'' given that the rule applies to brokers-dealers, which would include a member of a national securities exchange that is a broker-dealer.

The Commission is also proposing to replace a specific reference to the notices required under ''paragraphs (b), (c), (d), or (e)'' of Rule 17a–11 in current paragraph (f) with a reference to ''this section''. This would incorporate all the notices required under Rule 17a–11, including notices that would be required under the new security-based swap customer reserve account notification requirement.

Finally, the Commission proposes to amend paragraph (i) to reference ''§ 240.15c3–1, § 240.15c3–1d, § 240.15c3–3, § 240.17a–5, and § 240.17a–12'' instead of ''§ 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)''. This proposed amendment corrects certain cross-references that are outdated due to the recently adopted amendments to some of these rules.[841] It also eliminates cross-references to specific paragraphs in the event of future amendments to these cross-referenced rules.

Request for Comment

The Commission generally requests comment on these additional proposed amendments to Rule 17a–11, including comment on whether any of the proposed amendments would result in substantive changes to the requirements applicable to broker-dealers.

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

1. Introduction

As discussed above, section 764 of the Dodd-Frank Act added section 15F to the Exchange Act.[842] Section 15F(f)(2) provides that the Commission shall adopt rules governing reporting and recordkeeping for SBSDs and MSBSPs.[843] Further, 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.[844] In addition, section 15F(f)(1)(B)(ii) provides that 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.[845]

After considering the anticipated business activities of nonbank SBSDs, the Commission is proposing to establish a securities count program for these registrants under sections 15F that is modeled on the securities count program for broker-dealers codified in Rule 17a–13.[846] Rule 17a–13 requires certain broker-dealers (generally, broker-dealers that hold 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.[847]

Like Rule 17a–11, Rule 17a–13 was adopted in the aftermath of the securities industry ''paper work'' crisis of 1967–1970.[848] At that time, the Commission identified several factors contributing to the crisis, including, that securities were not checked and counted frequently enough nor controlled tightly enough.[849] The Commission also identified corrective measures to counter these conditions in the future,[850] including requiring broker-dealers to conduct quarterly security counts as part of the effort to eliminate the ''deficiencies in broker-dealers' internal controls and procedures for safeguarding securities reflected by material amounts of unresolved security differences, suspense balances and unverified

[838] The proposed 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), (a)(2), (b), (c), (g), (h), and (j). *See* Rule 17a–11, as proposed to be amended.

[839] The Commission proposes the following stylistic and corrective changes to Rule 17a–11, as proposed to be amended: (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.

[840] The proposed amendments would replace the phrase ''paragraph (g)'' with the phrase ''paragraph (h)'' in the following paragraphs of Rule 17a–11, as proposed to be amended: (a)(1), (b), (c), (d)(1), (d)(2), and (g). *See* Rule 17a–11, as proposed to be amended.

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

[842] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10.

[843] *See* 15 U.S.C. 78o–10(f)(2).

[844] *See* 15 U.S.C. 78o–10(f)(1)(A).

[845] *See* 15 U.S.C. 78o–10(f)(1)(B)(ii).

[846] *See* 17 CFR 240.17a–13.

[847] *See id.* As noted in section I. of this release, the Dodd-Frank Act amended the definition of *security* in section 3(a)(10) of the Exchange Act to include a security-based swap. *See* Public Law 111–203, 761(a)(2); 15 U.S.C. 78c(a)(10). 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 Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* 76 FR 39927.

[848] *See Quarterly Securities Counts by Certain Exchange Members, Brokers and Dealers,* Exchange Act Release No. 9140 (Apr. 19, 1971), 36 FR 7974 (Apr. 28, 1971); *Net Capital Requirements for Brokers and Dealers; Amended Rules,* Exchange Act Release No. 18417 (Jan. 13, 1982), 47 FR 3512 (Jan. 25, 1982).

[849] *See Study of Unsafe and Unsound Practices of Brokers and Dealers* at 2.

[850] *See id.* at 3–5.

transfer items.''[851] As the Commission stated when proposing Rule 17a–13,

> One of a broker-dealer's major functions is that of moving funds from buyer to seller in exchange for securities. The movement of these funds and securities is monitored and directed by the books and records of the broker-dealers involved in the various transactions. To the extent that a firm's records do not accurately reflect the movement and location of funds and securities, the ability of that firm to operate efficiently and even its continued viability come into question. The insolvency of many broker-dealers in the past few years is attributable to a large extent to their loss of operational control. Once a firm's operations reach a certain level of errors, it is a Herculean task, requiring extraordinary sums of capital, to reverse the process and to resolve past errors so that the firm's present records accurately reflect its position. That part of the broker-dealer's operations dealing with the movement and location of securities has, in the past, been subject only to the once-a-year check of the X–17A–5 audit. The accounting record for the location and movement of securities is the stock record. The annual audit may disclose differences between positions reflected in the stock record and the results of a physical count of securities and verification of securities positions outside the firm. Many accountants have advised and urged their clients to make regular periodic box counts, but this advice has not always been followed. Furthermore, some firms have failed to research and resolve promptly stock record differences.[852]

Rule 17a–13 continues to play an important role today, given the volume of securities transactions and the resulting movement of securities between control locations and broker-dealers.

Under the proposed securities count program for SBSDs, broker-dealer SBSDs and broker-dealer MSBSPs—as broker-dealers—would be subject to Rule 17a–13. Consequently, they will be required to comply with the existing securities count requirements in the rule.

Stand-alone SBSDs would be subject to proposed Rule 18a–9, which is modeled on Rule 17a–13. Proposed Rule 18a–9 would not include a parallel requirement for every requirement in Rules 17a–13.[853] In addition, proposed Rule 18a–9 would not apply to stand-alone MSBSPs because the customer protection rationale for Rule 17a–13 and proposed Rule 18a–9 is not as pertinent to stand-alone MSBSPs. For example, the Commission preliminarily does not anticipate that stand-alone 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 SBSDs. Finally, for the reasons discussed above in section I. of this release, proposed Rule 18a–9 would not apply to bank SBSDs and bank MSBSPs.

2. Proposed Rule 18a–9

Undesignated Introductory Paragraph

Proposed Rule 18a–9 contains an undesignated introductory paragraph explaining that the rule applies only to an SBSD that is not dually registered as a broker-dealer (*i.e.,* a stand-alone SBSD), provided, however, that the rule does not apply to an SBSD with a prudential regulator (*i.e.,* a bank SBSD).[854] The note further explains that a broker-dealer, including a broker-dealer that is dually registered as an SBSD, is subject to the securities count requirements under Rule 17a–13.[855]

Requirement To Perform a Securities Count

Paragraph (b) of Rule 17a–13 prescribes the requirement to perform a quarterly securities count and specifies the steps a broker-dealer must take in performing a count. Specifically, it requires a broker-dealer to at least once in each calendar quarter:

- Physically examine and count all securities held including securities that are the subjects of repurchase or reverse repurchase agreements;[856]
- 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 the broker-dealer's control or direction but not in the broker-dealer's physical possession by examination and comparison of the supporting detail records with the appropriate ledger control accounts;[857]
- Verify all securities in transfer, in transit, pledge, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to the broker-dealer's control or direction but not in the broker-dealer's physical possession, where such securities have been in said status for longer than thirty days;[858]
- Compare the results of the count and verification with the broker-dealer's records; [859] and
- Record on the books and records of the broker-dealer all unresolved differences setting forth the security involved and date of comparison in a security count difference account no later than seven business days after the date of each required quarterly security examination, count, and verification in accordance with the requirements provided in paragraph (c) of the Rule.[860]

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, 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. As discussed above in section II.A.2.a. of this release, a broker-dealer's securities record consists of a ''long'' side and a ''short'' side. 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. A short securities difference occurs when the amount of securities on the ''long'' side of the securities record are greater than the amount of securities on the ''short'' side of the securities. A long securities difference occurs when the opposite is true. The rule requires the firm to record on its books and records any unresolved differences within seven business days after the date of each required count. The seven business days should be measured from the date of the commencement of the count. A broker-dealer must take a capital charge for short securities differences outstanding seven business

[851] *Id.* at 30.

[852] *Quarterly Securities Counts by Certain Exchange Members, Brokers and Dealers,* 36 FR 7974.

[853] The Commission is not proposing to include in proposed Rule 18a–9 provisions that would parallel the provisions in paragraphs (a)(1), (a)(2), (a)(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. *See* 17 CFR 240.17a–13(a)(1), (a)(2), (a)(3), and (e). The Commission preliminarily believes that SBSDs will not limit their activities to the types of activities in which the exempt broker-dealers engage. However, the Commission is requesting comment below on this question.

[854] *See* undesignated introductory paragraph of proposed Rule 18a–9.

[855] *See id.*

[856] *See* 17 CFR 240.17a–13(b)(1).

[857] *See* 17 CFR 240.17a–13(b)(2).

[858] *See* 17 CFR 240.17a–13(b)(3).

[859] *See* 17 CFR 240.17a–13(b)(4).

[860] *See* 17 CFR 240.17a–13(b)(5). This paragraph further provides that no examination, count, verification, and comparison for the purpose of the rule shall be within two months of or more than four months following a prior examination, count, verification, and comparison made hereunder. *See id.*

days or more and for long securities differences where the securities have been sold before they are adequately resolved.[861]

The Commission is proposing to include parallel securities count requirements in proposed Rule 18a–9 that would mirror the requirements in paragraph (b) of Rule 17a–13.[862] Consequently, a stand-alone SBSD would be required to perform a securities count each quarter following steps specified in paragraph (a) of Rule 18a–9 that are identical to the steps specified in paragraph (b) of Rule 17a–13.[863] Moreover, a securities count would need to be performed no sooner than two months after the last count and no later than four months after the last count.[864]

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 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.[865] This permits a broker-dealer to perform the securities count on a rolling basis throughout the quarter as opposed to all in one day. 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.

The Commission is proposing to include a parallel securities count requirement in proposed Rule 18a–9 that would mirror the requirement in paragraph (c) of Rule 17a–13.[866] Consequently, a stand-alone SBSD could perform the securities count as of a date certain or on a cyclical basis subject conditions that are identical to the conditions in paragraph (c) of Rule 17a–13.[867]

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.[868] Thus, the rule requires a separation of duties as a control to promote the integrity of the securities count process.[869]

The Commission is proposing to include a parallel separation of duties requirement in proposed Rule 18a–9 that would mirror the requirement in paragraph (d) of Rule 17a–13.[870] Consequently, a stand-alone SBSD would need 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.[871]

Exemptions

Paragraph (f) of Rule 17a–13 provides that the Commission may, upon written request, exempt from the provisions of the rule, either unconditionally or on specified terms and conditions, any broker-dealer that satisfies the Commission it is not necessary in the public interest and for the protection of investors to subject the firm to certain or all of the provisions of the rule, because of the special nature of the firm's business, the safeguards the firm has established for the protection of customers' funds and securities, or such other reason as the Commission deems appropriate.[872]

The Commission is proposing to include a parallel exemption provision in proposed Rule 18a–9 that would mirror the provision in paragraph (f) of Rule 17a–13.[873] Consequently, a stand-alone SBSD could seek an exemption from proposed Rule 18a–9 or from a specific requirement in the rule.[874] The standard for granting such requests would be the same standard as is used for granting exemptions from Rule 17a–13.

Request for Comment

The Commission generally requests comment on proposed Rule 18a–9. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Are there any categories of stand-alone SBSDs to which proposed Rule 18a–9 should not apply? If so, explain why.

2. Should proposed Rule 18a–9 apply to stand-alone MSBSPs? If so, explain why. Should proposed Rule 18a–9 apply to bank SBSDs? If so, explain why. Should proposed Rule 18a–9 apply to bank MSBSPs? If so, explain why.

3. How should security-based swaps be treated with respect to the requirements in Rule 17a–13 and proposed Rule 18a–9 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?

3. Capital Charge

As discussed above, Rule 15c3–1 requires a broker-dealer to take a capital charge for short securities differences that are unresolved for seven days or longer and for long securities differences where the securities have been sold before they are adequately resolved.[875] The Commission's proposed capital rule for stand-alone SBSDs is modeled closely on Rule 15c3–1 but the proposal did not include these types of capital charges.[876] The failure to include these capital charges in proposed Rule 18a–1 was inadvertent and, consequently, the Commission is proposing to include them in the rule.

Request for Comment

The Commission generally requests comment on this proposed capital charge. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Is the proposed capital appropriate for stand-alone SBSDs? If not, explain why.

[861] *See* 17 CFR 240.15c3–1(c)(2)(v).

[862] *Compare* 17 CFR 240.17a–13(b), *with* paragraph (a) of proposed Rule 18a–9.

[863] *See* paragraph (a) of proposed Rule 18a–9.

[864] *See id.*

[865] *See* 17 CFR 240.17a–13(c).

[866] *Compare* 17 CFR 240.17a–13(c), *with* paragraph (b) of proposed Rule 18a–9.

[867] *See* paragraph (b) of proposed Rule 18a–9.

[868] *See* 17 CFR 240.17a–13(d).

[869] *See id.*

[870] *Compare* 17 CFR 240.17a–13(d), *with* paragraph (c) of proposed Rule 18a–9.

[871] *See* paragraph (c) of proposed Rule 18a–9.

[872] *See* 17 CFR 240.17a–13(f).

[873] *Compare* 17 CFR 240.17a–13(f), *with* paragraph (d) of proposed Rule 18a–9.

[874] *See* paragraph (d) of proposed Rule 18a–9.

[875] *See* 17 CFR 240.15c3–1(c)(2)(v).

[876] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70214.

III. General Request for Comment

The Commission invites comment, including relevant data and analysis, regarding all aspects of the proposed rules. The Commission also requests comment on appropriate effective dates for the proposals, including whether it would be appropriate to stagger or delay the effective dates for the requirements based on the nature or characteristics of the activities or entities to which they would apply.

IV. Paperwork Reduction Act

Certain provisions of the rule amendments and new rules proposed in this release would contain a new ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[877] The Commission is submitting the proposed rule amendments and proposed new rules to the Office of Management and Budget (''OMB'') for review and approval in accordance with the PRA. 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 for the collections of information are:

(1) Rule 17a–3—Records to be made by certain brokers and dealers (OMB control number 3235–0033);

(2) Rule 17a–4—Records to be preserved by certain brokers and dealers (OMB control number 3235–0279);

(3) Rule 17a–5—Reports to be made by certain brokers and dealers (OMB control number 3235–0123);

(4) Rule 17a–11—Notification provisions for brokers and dealers (OMB control number 3235–0085);

(5) Rule 18a–5—Records to be made by certain security-based swap dealers and major security-based swap participants (a proposed new collection of information);

(6) Rule 18a–6—Records to be preserved by certain security-based swap dealers and major security-based swap participants (a proposed new collection of information);

(7) Rule 18a–7—Reports to be made by certain security-based swap dealers and major security-based swap participants (a proposed new collection of information);

(8) Rule 18a–8—Notification provisions for security-based swap dealers and major security-based swap participants (a proposed new collection of information);

(9) Rule 18a–9—Quarterly security counts to be made by certain security-based swap dealers (a proposed new collection of information); and

(10) Form SBS (a proposed new collection of information).

The burden estimates contained in this section do not include any other possible costs or economic effects beyond the burdens required to be calculated for PRA purposes.

A. Summary of Collections of Information Under the Proposed Rules and Proposed Rule Amendments

1. Proposed Amendments to Rule 17a–3 and Proposed Rule 18a–5

Section 764 of the Dodd-Frank Act added section 15F(f)(2) to the Exchange Act, which provides that the Commission shall adopt rules governing reporting and recordkeeping for SBSDs and MSBSPs.[878] Rule 17a–3 requires a broker-dealer to make and keep current certain records.[879] The Commission is proposing to amend this rule to account for the security-based swap and swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs. With respect to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, the Commission is proposing new Rule 18a–5—which is modeled on Rule 17a–3, as proposed to be amended—to require these registrants to make and keep current certain records.[880] Proposed Rule 18a–5 would not include a parallel requirement for every requirement in Rule 17a–3 because some of the requirements in Rule 17a–3 relate to activities that are not expected or permitted of SBSDs and MSBSPs. Further, the proposed recordkeeping requirements for bank SBSDs and bank MSBSPs are tailored specifically to their activities as an SBSD or an MSBSP because: (1) the Commission's authority under section 15F(f) of the Exchange Act is tied to activities related to the SBSD or MSBSP business; (2) bank SBSDs and bank MSBSPs are subject to recordkeeping requirements applicable to banks; and (3) the prudential regulators—rather than the Commission—establish and monitor capital, margin, and other prudential requirements applicable to bank SBSDs and bank MSBSPs.

The proposed amendments to Rule 17a–3 and proposed Rule 18a–5 would establish a number of new collections of information, as summarized in the table below.

	Non-SBSD/ MSBSP broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	Non-model stand-alone SBSDs	ANC 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).

[877] *See* 44 U.S.C. 3501 *et seq.;* 5 CFR 1320.11.

[878] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10(f)(2).

[879] *See* 17 CFR 240.17a–3.

[880] *See* proposed Rule 18a–5.

	Non-SBSD/ MSBSP broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	Non-model stand-alone SBSDs	ANC stand-alone SBSDs	Bank SBSDs	Stand-alone MSBSPs
Liquidity stress test.	.....	.....	17a–3(a)(24) ...	.....	.....	18a–5(a)(11).		
Account equity and margin calculations under proposed 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 under proposed Rule 18a–4.	.....	17a–3(a)(26) ...	17a–3(a)(26) ...	.....	18a–5(a)(13) ...	18a–5(a)(13) ...	18a–5(b)(9).	
Customer reserve requirements under proposed Rule 18a–4.	.....	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 external 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).

* Broker-dealers are currently required to comply with these paragraphs of Rule 17a–3, but the Commission proposes to amend these paragraphs to tailor the types of records that should be made and kept with respect to security-based swaps, and to make certain technical changes.

2. Proposed Amendments to Rule 17a–4 and Proposed Rule 18a–6

Section 764 of the Dodd-Frank Act added section 15F(f)(2) to the Exchange Act, which provides that the Commission shall adopt rules governing reporting and recordkeeping for SBSDs and MSBSPs.[881] Rule 17a–4 requires a broker-dealer to preserve certain records if it makes or receives them.[882] The Commission is proposing to amend this rule to account for the security-based swap and swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs. With respect to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, the Commission is proposing new Rule 18a–6—which is modeled on Rule 17a–4, as proposed to be amended—to require these registrants to preserve certain records if they make or receive them.[883] Proposed Rule 18a–6 would not include a parallel requirement for every requirement in Rule 17a–4 because some of the requirements in Rule 17a–4 relate to activities that are not expected or permitted of SBSDs and MSBSPs. In addition, the recordkeeping requirements for bank SBSDs and bank MSBSPs are tailored specifically to bank SBSD and bank MSBSP activities relating to operating as an SBSD or an MSBSP.

The proposed amendments to Rule 17a–4 and proposed Rule 18a–6 would establish a number of new collections of information, as summarized in the table below.

	Non-SBSD/ MSBSP broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	Non-model stand-alone SBSDs	ANC stand-alone SBSDs	Bank SBSDs	Stand-alone MSBSPs
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–6(b)(4)	
Memoranda of proprietary orders.	.....	.....	.....	.....	18a–6(b)(1)(i) citing 18a–6(a)(5).	18a–6(b)(1)(i) citing 18a–6(a)(5).	18a–6(b)(2)(i) citing 18a–6(b)(5).	18a–6(b)(1)(i) citing 18a–6(a)(5).
Confirmations	.....	.....	.....	.....	18a–6(b)(1)(i) citing 18a–6(a)(6).	18a–6(b)(1)(i) citing 18a–6(a)(6).	18a–6(b)(2)(i) citing 18a–6(b)(6).	18a–6(b)(1)(i) citing 18a–6(a)(6).

[881] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10(f)(2).

[882] *See* 17 CFR 240.17a–4.

[883] *See* proposed Rule 18a–6.

	Non-SBSD/ MSBSP broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	Non-model stand-alone SBSDs	ANC stand-alone SBSDs	Bank SBSDs	Stand-alone MSBSPs
Accountholder information.	.....	.....	.....	.....	18a–6(b)(1)(i) citing 18a–6(a)(7).	18a–6(b)(1)(i) citing 18a–6(a)(7).	18a–6(b)(2)(i) citing 18a–6(b)(7).	18a–6(b)(1)(i) citing 18a–6(a)(7).
Options positions	.....	.....	.....	.....	18a–6(b)(1)(i) citing 18a–6(a)(8).	18a–6(b)(1)(i) citing 18a–6(a)(8).	.....	18a–6(b)(1)(i) citing 18a–6(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–6(a)(9).	18a–6(b)(1)(i) citing 18a–6(a)(9).	.....	18a–6(b)(1)(i) citing 18a–6(a)(9).
Liquidity stress test.	.....	.....	17a–4(b)(1) citing 17a–3(a)(24).	.....	.....	18a–6(b)(1)(i) citing 18a–6(a)(11).		
Account equity and margin calculations under proposed 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–6(a)(12).	18a–6(b)(1)(i) citing 18a–6(a)(12).	.....	18a–6(b)(1)(i) citing 18a–6(a)(12).
Possession or control requirements under proposed Rule 18a–4.	.....	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–6(a)(13).	18a–6(b)(1)(i) citing 18a–6(a)(13).	18a–6(b)(2)(i) citing 18a–6(b)(9).	
Customer reserve requirements under proposed Rule 18a–4.	.....	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–6(a)(14).	18a–6(b)(1)(i) citing 18a–6(a)(14).	18a–6(b)(2)(i) citing 18a–6(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–6(a)(15).	18a–6(b)(1)(i) citing 18a–6(a)(15).	18a–6(b)(2)(i) citing 18a–6(b)(11).	18a–6(b)(1)(i) citing 18a–6(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–6(a)(16).	18a–6(b)(1)(i) citing 18a–6(a)(16).	18a–6(b)(2)(i) citing 18a–6(b)(12).	
Compliance with external 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–6(a)(17).	18a–6(b)(1)(i) citing 18a–6(a)(17).	18a–6(b)(2)(i) citing 18a–6(b)(13).	18a–6(b)(1)(i) citing 18a–6(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).
Internal credit ratings.	.....	.....	.....	.....	.....	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).

*Broker-dealers are currently required to comply with these paragraphs of Rule 17a–4, but the Commission proposes to amend these paragraphs as required by the Dodd-Frank Act or to tailor to the types of records that should be preserved with respect to security-based swaps, and to make certain technical changes.

3. Proposed Amendments to Rule 17a–5 and Proposed Rule 18a–7

Section 764 of the Dodd-Frank Act added section 15F(f)(2) to the Exchange Act, which provides that the Commission shall adopt rules governing reporting for SBSDs and MSBSPs.[884] Further, 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.[885] The Commission has concurrent authority under section 17(a)(1) of the Exchange Act to prescribe reporting requirements for broker-dealers.[886]

Rule 17a–5 requires a broker-dealer to annually file reports audited by a PCAOB-registered independent public accountant, disclose certain financial information to customers, file with the Commission a statement about its engagement of an independent public accountant, notify the Commission of a change of accountant, and to notify the Commission of the change in fiscal year.[887] The rule 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 an instance of material weakness.[888] Rule 17a–5 requires broker-dealers to file a financial report, compliance report, and/or exemption report with the Commission on an annual basis.[889] ANC broker-dealers are required to file with the Commission additional information relating to market risk, credit risk, and the monthly liquidity stress test on a periodic basis.[890]

The Commission is proposing amendments to Rule 17a–5 to account for the security-based swap activities of broker-dealer SBSDs and broker-dealer MSBSPs.[891] Proposed Rule 18a–7—which is modeled on Rule 17a–5, as proposed to be amended—would establish reporting requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.[892] Under Rule 17a–5, as proposed to be amended, and proposed Rule 18a–7, SBSDs and MSBSPs would be required to periodically file proposed Form SBS.[893] Broker-dealer SBSDs and broker-dealer MSBSPs would file Form SBS instead of the applicable part of Form X–17A–5.[894] Form SBS would include additional entries as compared to Part II CSE of Form X–17A–5 to account for the firm's security-based swap activities.

Proposed Rule 18a–7 does not include a parallel requirement for every requirement in Rule 17a–5.[895] Moreover, instead of requiring stand-alone SBSDs and stand-alone MSBSPs to make available to customers an audited statement of financial condition with appropriate notes and certain reports of the independent public accountant, the Commission proposes that stand-alone SBSDs and stand-alone MSBSPs make such information available on their public Web site.[896] Further, for the reasons discussed above, the reporting requirements in proposed Rule 18a–7, other than the requirement to periodically file proposed Form SBS, would not apply to bank SBSDs and bank MSBSPs.

4. Proposed Amendments to Rule 17a–11 and Proposed Rule 18a–8

Section 764 of the Dodd-Frank Act added section 15F(f)(2) to the Exchange Act, which provides that the Commission shall adopt rules governing reporting for SBSDs and MSBSPs.[897] 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.[898] In addition, the Commission has concurrent authority under section 17(a)(1) of the Exchange Act to prescribe reporting requirements for broker-dealers.[899]

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.[900] The Commission is proposing amendments to Rule 17a–11 to account for the security-based swap activities of broker-dealer SBSDs and broker-dealer MSBSPs.[901] Proposed Rule 18a–8—which is modeled on Rule 17a–11, as proposed to be amended—would establish notification requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.[902]

Proposed Rule 18a–8 would not include a parallel requirement for every requirement in Rule 17a–11 because some of the Rule 17a–11 notices relate to calculations that would not be relevant to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.[903] Further, the notification requirements for bank SBSDs and bank MSBSPs are designed to be tailored specifically to their activities as an SBSD or an MSBSP.

The proposed amendments to Rule 17a–11 and proposed Rule 18a–8 would establish a number of new collections of information, as summarized in the table below.

	Non-SBSD/ MSBSP broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	ANC stand–alone SBSDs	Non-model stand-alone SBSDs	Bank SBSDs	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).			

[884] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10(f)(2).

[885] *See* 15 U.S.C. 78o–10(f)(1)(A).

[886] *See* 15 U.S.C. 78q(a)(1).

[887] *See* 17 CFR 240.17a–5.

[888] *See* 17 CFR 240.17a–5(h).

[889] *See* 17 CFR 240.17a–5(d).

[890] *See* 17 CFR 240.17a–5(a)(5).

[891] *See* Rule 17a–5, as proposed to be amended. *See also* section II.B. of this release.

[892] *See* proposed Rule 18a–7.

[893] *See* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended; paragraphs (a)(1) and (2) of proposed Rule 18a–7. Nonbank SBSDs and nonbank MSBSPs would be required to file Form SBS on a monthly basis, whereas bank SBSDs and bank MSBSPs would be required to file Form SBS on a quarterly basis. *Compare* paragraphs (a)(1)(iv) of Rule 17a–5, as proposed to be amended, *with* paragraph (a)(1) of proposed Rule 18a–7, *and* paragraph (a)(2) of proposed Rule 18a–7.

[894] As described above, a broker-dealer is required to file with the Commission or the broker-dealer's DEA a different part of Form X–17A–5 (Part II, Part IIA, Part IIB, or Part II CSE), depending on the nature of its business.

[895] For example, as described in further detail above, the Commission is not proposing a requirement in Rule 18a–7 that is parallel to the exemption report requirement in Rule 17a–5 or the requirement to file certain reports with SIPC. *See* 17 CFR 240.17a–5(d)(4) and (e)(4).

[896] *Compare* 17 CFR 240.17a–5(c), *with* paragraph (b) of proposed Rule 18a–7.

[897] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10(f)(2).

[898] *See* 15 U.S.C. 78o–10(f)(1)(A).

[899] *See* 15 U.S.C. 78q(a)(1).

[900] *See* 17 CFR 240.17a–11.

[901] *See* paragraphs (b)(5), (e), and (f) of Rule 17a–11, as proposed to be amended.

[902] *See* proposed Rule 18a–8.

[903] *See, e.g.,* 17 CFR 240.17a–11(b)(2) and (c)(1).

	Non-SBSD/ MSBSP broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	ANC stand–alone SBSDs	Non-model stand-alone SBSDs	Bank SBSDs	Stand-alone MSBSPs
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.	.....	.....	.....	17a–11 (b)(6) ..	.....	.....	.....	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).		
Insufficient liquidity reserves.	.....	.....	17a–11(e)	.....	18a–8(f).			
Failure to make a required reserve deposit.	17a–11(f)	17a–11(f)	17a–11(f)	.....	18a–8(g)	18a–8(g)	18a–8(g).	

5. Proposed Rule 18a–9

Section 764 of the Dodd-Frank Act added section 15F(f)(2) to the Exchange Act, which provides that the Commission shall adopt rules governing reporting for SBSDs.[904] In addition, section 15F(f)(2)(B)(ii) provides that nonbank SBSDs 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.[905]

Proposed Rule 18a–9, which is modeled on Rule 17a–13, would require stand-alone SBSDs 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.[906]

B. Proposed Use of Information

Rule 17a–3, as proposed to be amended, and proposed Rule 18a–5 would require broker-dealers, SBSDs, and MSBSPs to make and keep current certain books and records. Rule 17a–4, as proposed to be amended, and proposed Rule 18a–6 would require broker-dealers, SBSDs, and MSBSPs to preserve certain records if the firm makes or receives the type of record. These rules are designed, among other things, to promote the prudent operation of broker-dealers, SBSDs, and MSBSPs and to assist the Commission, SROs, and state securities regulators in conducting effective examinations.[907] Thus, the collections of information under the proposed amendments to Rules 17a–3 and 17a–4, and proposed Rules 18a–5 and 18a–6, would facilitate the examinations of broker-dealers, SBSDs, and MSBSPs.

Rule 17a–5, as proposed to be amended, and proposed Rule 18a–7 would establish reporting requirements for broker-dealers, SBSDs, and MSBSPs. Rule 17a–11, as proposed to be amended, and proposed Rule 18a–8 would require broker-dealers, SBSDs, and MSBSPs to notify the Commission of certain events related to their financial condition. The rules are designed to promote compliance with the proposed financial responsibility requirements for SBSDs and MSBSPs, facilitate regulators' oversight and examinations of such firms, and promote transparency of SBSDs' and MSBSPs' financial condition and operation.

Proposed Rule 18a–9 would require a stand-alone SBSD to physically examine, count and verify all securities positions (*e.g.,* equities, corporate bonds, and government securities), and to compare the results of the count and verification with the firm's records at least once each calendar quarter. This proposed rule is designed to promote an SBSD's custody of securities and accurate accounting for securities.

C. Respondents

Consistent with prior releases, the Commission estimates that fifty or fewer entities ultimately may be required to register with the Commission as SBSDs.[908]

In addition, consistent with prior releases, based on available data regarding the single-name credit default swap 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.[909] 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. Accordingly, for purposes of calculating PRA reporting burdens, the Commission estimates there will be fifty SBSDs and five MSBSPs.

[904] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10(f)(2).

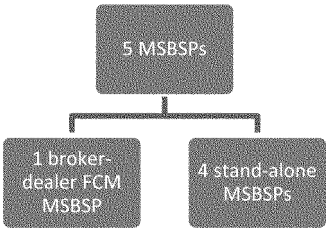
[905] *See* 15 U.S.C. 78o–10(f)(1)(B)(ii).

[906] Proposed Rule 18a–9 does not include the exceptions from applicability that Rule 17a–13 includes. *See* 17 CFR 240.17a–13(a) and (e).

[907] *See, e.g., Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934,* 66 FR 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)).

[908] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70292; *Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30725.

[909] *See id.*



Of the five MSBSPs, the Commission estimates that one firm also would be registered as a broker-dealer and an FCM.[910] 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 securities transactions,[911] but not in the business of effecting security-based swap transactions [912] or commodities, securities futures products, or swaps [913] and yet involved in enough security-based swap transactions to be required to register as an MSBSP.[914] However, 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 proposed and amended rules in certain instances.[915]

The Commission previously estimated that sixteen broker-dealers would likely seek to register as SBSDs.[916] The Commission is retaining this estimate for purposes of this release. The Commission believes that all sixteen broker-dealer SBSDs also will be registered as FCMs, since SBSDs may find it beneficial to hedge security-based swap positions with futures contracts, options on futures, or swaps.[917] Accordingly, for purposes of calculating PRA reporting burdens, the Commission estimates there will be sixteen broker-dealer FCM SBSDs.

For purposes of calculating PRA reporting burdens, the Commission estimates there would be twenty-five bank SBSDs and nine stand-alone SBSDs.[918] Because the Commission estimates that sixteen broker-dealers would likely register as SBSDs, there would be an estimated maximum of thirty-four non-broker-dealer SBSDs consisting of bank SBSDs and stand-alone SBSDs.[919] For business planning purposes, risk management purposes, potential regulatory requirements, and other reasons, some of these entities likely would register with the Commission as stand-alone SBSDs. Because many of the dealers that currently engage in OTC derivatives activities are banks, the Commission estimates that approximately 75% of the thirty-four non-broker-dealer SBSDs would register as bank SBSDs (*i.e.,* twenty-five firms),[920] and the remaining 25% would register as stand-alone SBSDs (*i.e.,* nine firms).[921]

The Commission believes that none of the bank SBSDS would register as FCMs, because of the burden associated with complying with three different supervisors' regulatory requirements.[922] However, the Commission believes that all of the stand-alone SBSDs would register as FCMs, since SBSDs may find it beneficial to hedge security-based swap positions with futures contracts, options on futures, or swaps.[923]

Of the nine stand-alone FCM SBSDs, the Commission estimates that, based on its experience with ANC broker-dealers and OTC derivatives dealers, the majority of stand-alone SBSDs would apply to use internal models.[924] Consequently, the Commission is estimating that six of the nine stand-alone SBSDs would apply to operate as ANC stand-alone SBSDs, which would use internal models to compute net capital under proposed Rule 18a–1. Because the Commission estimates that there would be six ANC stand-alone SBSDs, the Commission estimates that three stand-alone SBSDs would not use internal models to compute net capital.[925]

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[910] *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 65808.

[911] *See* 15 U.S.C. 78c(a)(4) (generally defining *broker* as any person engaged in the business of effecting transactions in securities for the account of others).

[912] *See* 15 U.S.C. 78c(a)(71) (generally defining *security-based swap dealer* as any person who holds himself out as a dealer in security-based swaps, makes a market in security-based swaps, regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account, or engages in any other activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps).

[913] *See* 7 U.S.C. 1a(28) (generally defining *futures commission merchant* as a person engaged in soliciting or in accepting orders for the purchase or sale of a commodity for future delivery, a security futures product, or a swap).

[914] *See* 15 U.S.C. 78c(a)(67) (generally defining *major security-based swap participant* as any person who is not an SBSD but maintains a substantial position in security-based swaps for any of the major security-based swap categories, whose outstanding security-based swaps could have serious adverse effects on the financial stability of the U.S. banking system or financial markets, or is highly leveraged and maintains a substantial position in security-based swaps for any of the major security-based swap categories).

[915] 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 65814.

[916] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70292.

[917] *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 65814.

[918] The Commission does not anticipate that any firms will be dually registered as a broker-dealer and a bank.

[919] 50 SBSDs − 16 broker-dealer SBSDs = 34 maximum non-broker-dealer SBSDs.

[920] 34 maximum estimated non-broker-dealer SBSDs × 75% = 25.5, rounded to 25 bank SBSDs.

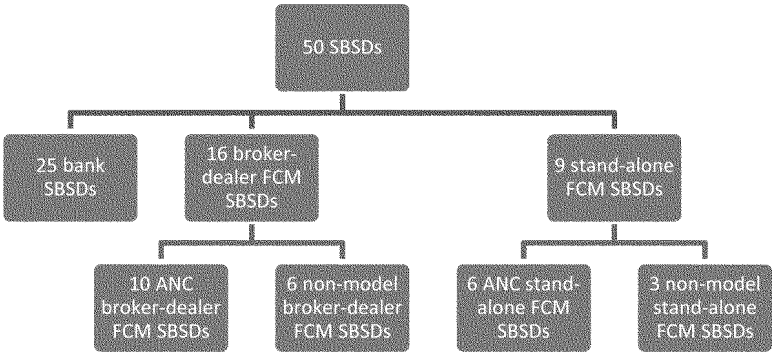
[921] 34 maximum estimated non-broker-dealer SBSDs × 25% = 8.5, rounded to 9 stand-alone FCM SBSDs.

[922] In addition, the Commission understands that banks do not register as FCMs; rather, bank affiliates register as FCMs.

[923] *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 65814.

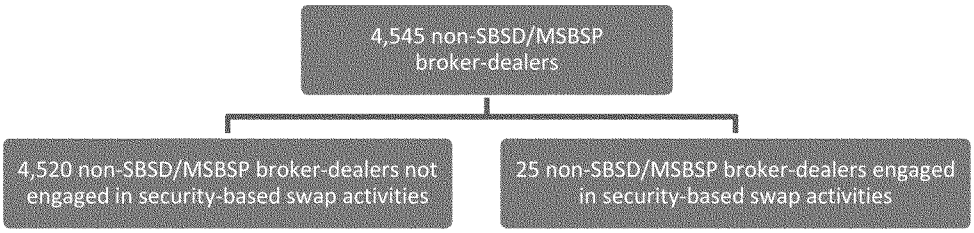
[924] VaR models, while more risk-sensitive than standardized haircuts, tend to substantially reduce the amount of the deductions to tentative net capital in comparison to the standardized haircuts because the models recognize more offsets between related positions than the standardized haircuts. Therefore, the Commission expects that stand-alone SBSDs that have the capability to use internal models to calculate net capital would choose to do so.

[925] 9 stand-alone FCM SBSDs − 6 ANC stand-alone FCM SBSDs = 3 non-model stand-alone FCM SBSDs.



Of the sixteen broker-dealer FCM SBSDs, the Commission estimates that ten firms would operate as ANC broker-dealer SBSDs, which use internal models to compute net capital under Rule 15c3–1.[926] Because the Commission estimates that ten broker-dealer SBSDs would be ANC broker-dealer SBSDs, it is estimated that six broker-dealer SBSDs would not use internal models to compute net capital.[927]

As of April 1, 2013, there were 4,545 broker-dealers registered with the Commission. The Commission estimates that twenty-five registered broker-dealers will be engaged in security-based swap activities but would not be required to register as an SBSD 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.[928] 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.[929] 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. Specifically, the existing broker-dealer capital requirements make it relatively costly to conduct these activities in broker-dealers. As a result, security-based swap activities are mostly concentrated in



affiliates of broker-dealers, not broker-dealers themselves.[930]

The Commission generally requests comment on all aspects of these estimates of the number of respondents. Commenters should provide specific data and analysis to support any comments they submit with respect to the number of respondents, including identifying any sources of industry information that could be used to estimate the number of respondents.

D. Total Initial and Annual Recordkeeping and Reporting Burden

1. Proposed Amendments to Rule 17a–3 and Proposed Rule 18a–5

The proposed amendments to Rule 17a–3 and proposed Rule 18a–5 would impose collection of information requirements that result in initial and annual time burdens for broker-dealers, SBSDs, and MSBSPs. Current Rule 17a–3 imposes an estimated annual burden of 539 hours per firm and $8,256 in costs and a total industry burden of 2,449,755 hours and $37,523,520 in costs.[931] The Commission estimates that the proposed amendments to Rule 17a–3 would impose the following initial and annual burdens:

[926] Currently, 6 broker-dealers are registered as ANC broker-dealers and 1 broker-dealer's application to register as an ANC broker-dealer is pending. The Commission has previously estimated that all current and future ANC broker-dealers will also register as SBSDs. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70293.

[927] 16 broker-dealer FCM SBSDs − 10 ANC broker-dealer FCM SBSDs = 6 non-model broker-dealer FCM SBSDs.

[928] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70302.

[929] *See* Public Law 111–203, 761 (amending definition of ''security'' in 15 U.S.C. 78c(a)(10)).

[930] *See* International Swaps and Derivatives Association (''ISDA''), *Margin Survey 2012* (May 1, 2012) (''ISDA Margin Survey 2012''), at Appendix 1, *available at http://www2.isda.org/attachment/NDM5MQ==/ISDA%20Margin%20Survey%20 2012%20FORMATTED.pdf.* The ISDA Margin Survey is conducted annually to examine the state of collateral use and management among derivatives dealers and end-users. Appendix 1 to the survey lists firms that responded to the survey including broker-dealers. *See id.*

[931] *See* Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–3* (Mar. 28, 2011), *available at http://www.reginfo.gov/public/do/DownloadDocument?documentID=238297&version=1.*

Burden	Initial burden	Annual burden
New security-based swap records [932]	*Per firm:* 30 hours *Industry:* 1,260 hours	*Per firm:* 42 hours. *Industry:* 1,764 hours.
New burdens applicable to broker-dealer SBSDs and broker-dealer MSBSPs [933].	*Per firm:* 60 hours *Industry:* 1,020 hours	*Per firm:* 75 hours. *Industry:* 1,275 hours.
New burdens applicable to broker-dealer SBSDs [934].	*Per firm:* 60 hours *Industry:* 960 hours	*Per firm:* 75 hours. *Industry:* 1,200 hours.
New burdens applicable to ANC broker-dealers [935].	*Per firm:* 20 hours *Industry:* 200 hours	*Per firm:* 25 hours. *Industry:* 250 hours.
Total—Proposed amendments to Rule 17a–3.	*Industry:* 3,440 hours	*Industry:* 4,489 hours.

The Commission estimates that proposed Rule 18a–5 would impose the following initial and annual burdens:

Burden	Initial burden	Annual burden
Burdens applicable to stand-alone SBSDs and stand-alone MSBSPs [936].	*Per firm:* 260 hours and $1,000 *Industry:* 3,380 hours and $13,000	*Per firm:* 325 hours and $4,650. *Industry:* 4,225 hours and $60,450.
Burdens applicable to stand-alone SBSDs [937]	*Per firm:* 60 hours *Industry:* 540 hours	*Per firm:* 75 hours. *Industry:* 675 hours.
Burdens applicable to ANC stand-alone SBSDs [938].	*Per firm:* 20 hours *Industry:* 120 hours	*Per firm:* 25 hours. *Industry:* 150 hours.
Burdens applicable to bank SBSDs and bank MSBSPs [939].	*Per firm:* 200 hours *Industry:* 5,000 hours	*Per firm:* 250 hours. *Industry:* 6,250 hours.
Burdens applicable to bank SBSDs [940]	*Per firm:* 60 hours *Industry:* 1,500 hours	*Per firm:* 75 hours. *Industry:* 1,875 hours.
Total—Proposed Rule 18a–5	*Industry:* 10,540 hours and $13,000	*Industry:* 13,175 hours and $60,450.

Estimated Ongoing Hours and Costs of Current Rule 17a–3

In the Supporting Statement accompanying the most recent extension of Rule 17a–3's collection, the estimated ongoing burden for a registered broker-dealer to make and keep current the books and records required by Rule 17a–3 averages out to 539 hours per year and $8,256 per year (after adjusting for increases in postage prices), although actual recordkeeping requirements vary depending on the broker-dealer's size and complexity.[941] Given that 4,545 broker-dealers were registered with the Commission as of April 1, 2013, current Rule 17a–3 creates an estimated industry-wide ongoing annual burden of 2,449,755 hours [942] and $37,523,520.[943]

Estimated Hours and Costs of Proposed Amendments to Rule 17a–3

Many of the proposed amendments to Rule 17a–3 are not expected to impose an initial burden. Most of the additional proposed amendments discussed in section II.A.2.b. of this release are largely clarifying changes that should not impose an hour burden or costs. With respect to the proposed new records required by the proposed amendments to Rule 17a–3, these are not expected to impose initial dollar costs because firms should already own or have established the requisite recordkeeping system software. Firms will likely need to program software to begin collecting additional records and may need to update their compliance manuals to reflect that certain paragraphs of Rule 17a–3 have been proposed to be re-numbered. The Commission expects these services to be performed in-house, and these hourly burdens are estimated below.

The Commission does not expect there to be a burden associated with its proposal to modify the definition of *securities regulatory authority* to include the CFTC and prudential regulators to the extent they oversee security-based swap activities, because the Commission does not expect any broker-dealers to dually register as banks and estimates that thirty-four broker-dealers would be dually registered as FCMs,[944] swap dealers, and/or major swap participants.[945] In the three instances that *securities regulatory authority* is mentioned, the broker-dealer must provide certain information to its securities regulatory

[932] *See* paragraphs (a)(1), (a)(3), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), and (a)(9)(iv) of Rule 17a–3, as proposed to be amended.

[933] *See* paragraphs (a)(25), (a)(28), and (a)(30) of Rule 17a–3, as proposed to be amended.

[934] *See* paragraphs (a)(26), (a)(27), and (a)(29) of Rule 17a–3, as proposed to be amended.

[935] *See* paragraph (a)(24) of Rule 17a–3, as proposed to be amended.

[936] *See* paragraphs (a)(1) through (a)(10), (a)(12), (a)(15), and (a)(17) of proposed Rule 18a–5.

[937] *See* paragraphs (a)(13), (a)(14), and (a)(16) of proposed Rule 18a–5.

[938] *See* paragraph (a)(11) of proposed Rule 18a–5.

[939] *See* paragraphs (b)(1) through (b)(8), (b)(11), and (b)(13) of proposed Rule 18a–5.

[940] *See* paragraphs (b)(9), (b)(10), and (b)(12) of proposed Rule 18a–5.

[941] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–3* at 9 (2,723,970 hours/year/5,057 registered broker-dealers = 539 hours/year per registered broker-dealer).

[942] 539 hours/year × 4,545 registered broker-dealers = 2,449,755 hours/year.

[943] $8,256/year × 4,545 registered broker-dealers = $37,523,520/year.

[944] The Commission estimates that 34 broker-dealers are dually registered as FCMs – 17 non-SBSD/MSBSP broker-dealers, 16 broker-dealer SBSDs, and 1 broker-dealer MSBSP. As of March 31, 2013, 34 broker-dealers reported a positive value on Line Item 7060 of the FOCUS Report (amount required to be segregated under CFTC rules), which is a line item that is only filled in by FCMs.

[945] The Commission estimates that all 17 estimated broker-dealer FCM SBSDs and broker-dealer FCM MSBSPs would also register as swap dealers or major swap participants. *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 65814 (estimating that 35 SBSDs or MSBSPs would also be registered with the CFTC as swap dealers or major swap participants).

authority if the firm does not make the required record or memorandum containing the information and the information is requested by the securities regulatory authority.[946] The Commission understands that it is already industry practice to make the required record and memorandum of the information in these three instances (especially among more sophisticated entities dually registered with the Commission and the CFTC), and therefore the Commission does not believe that this proposed amendment would impose an additional burden.

The Commission proposes to eliminate three exemptions from Rule 17a–3 which should not affect the burden of complying with Rule 17a–3. Paragraph (b)(2) exempts transactions cleared by a bank if the bank keeps the requisite records for the broker-dealer,[947] but the Commission believes that this exemption is not relied on. Paragraph (c) exempts records of certain U.S. bond sales[948] and paragraph (d) exempts records of certain *de minimis* cash transactions,[949] but the Commission believes these transactions are currently automatically recorded as a matter of practice because it likely takes more time to identify these transactions as exempt than to make and keep records of these transactions.

The Commission proposes to amend paragraphs (a)(1), (a)(3), (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) of Rule 17a–3 to include a provision requiring broker-dealers to make and keep current various records for security-based swaps.[950] The Commission estimates that the proposed amendments to paragraphs (a)(1), (a)(3), (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) of Rule 17a–3 would impose on each broker-dealer that engages in security-based swap activities an initial burden of thirty hours and an ongoing burden of approximately ten minutes per business day, or forty-two hours per year.[951] The Commission estimates that there are forty-two respondents—sixteen broker-dealer SBSDs, one broker-dealer MSBSP, and twenty-five non-SBSD/MSBSP broker-dealers engaged in security-based swap activities.[952] Thus, these proposed amendments would add to the industry an estimated initial burden of 1,260 hours[953] and an ongoing burden of 1,764 hours per year.[954]

The proposed amendments to Rule 17a–3 would require three additional types of records to be made and kept current by broker-dealer SBSDs and broker-dealer MSBSPs.[955] Because the burden to run the applicable calculation or comply with the applicable standard is accounted for in the PRA estimates for proposed Rules 18a–3,[956] 15Fi–1,[957] 15Fh–1 through 15Fh–5, and 15Fk–1,[958] 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 proposed to be amended, would impose an initial burden of 60 hours per firm and an ongoing annual burden of seventy-five hours per firm. The Commission estimates that there are seventeen respondents (sixteen broker-dealer SBSDs and one broker-dealer MSBSP), adding to the industry an initial burden of 1,020 hours[959] and an ongoing burden of 1,275 hours per year.[960]

The proposed amendments to Rule 17a–3 would require three additional types of records to be made and kept current by broker-dealer SBSDs.[961] Because the burden to run the applicable calculation or comply with the applicable standard is accounted for in the PRA estimates for proposed Rules 18a–4[962] and 15Fh–6,[963] 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)(26), (a)(27), and (a)(29) of Rule 17a–3, as proposed to be amended, would impose an initial burden of sixty hours per firm and an ongoing annual burden of seventy-five hours per firm. The Commission estimates that there are sixteen broker-dealer SBSDs, adding to the industry an initial burden of 960 hours[964] and an ongoing burden of 1,200 hours per year.[965]

The Commission proposes to add paragraph (a)(24) to Rule 17a–3, which would require ANC broker-dealers to make and keep current certain records relating to the firm's monthly liquidity stress test.[966] Because the burden of actually performing the liquidity stress test and creating a liquidity funding plan is already accounted for in the PRA estimate for Rule 15c3–1, as proposed to be amended,[967] the burden imposed by paragraph (a)(24) of Rule 17a–3, as proposed to be amended, is the requirement to make and keep current a written record of these tasks. The Commission estimates that paragraph (a)(24) would impose on each ANC broker-dealer an initial burden of twenty hours and an ongoing burden of twenty-five hours per year. The Commission estimates that there are ten

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[946] *See* paragraphs (a)(6)(i), (a)(7)(i), and (a)(19)(i) of Rule 17a–3, as proposed to be amended.

[947] *See* 17 CFR 240.17a–3(b)(2).

[948] *See* 17 CFR 240.17a–3(c).

[949] *See* 17 CFR 240.17a–3(d).

[950] The provision for securities other than security-based swaps would largely mirror the paragraph's current text. *See* paragraphs (a)(1), (a)(3), (a)(5)(i), (a)(6)(i), (a)(7)(i), (a)(8)(i), and (a)(9)(i) through (iii) of Rule 17a–3, as proposed to be amended. The provision for security-based swaps would tailor to security-based swaps the type of records the broker-dealer must make and keep current. *See* paragraphs (a)(1), (a)(3), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), and (a)(9)(iv) of Rule 17a–3, as proposed to be amended.

[951] (10 minutes/business day/60 minutes/hour) × 251 business days/year = 42 hours/year. There are 251 non-weekend days in 2013. The Commission does not include U.S. public holidays in estimating the number of business days per year, given that many broker-dealers trading security-based swaps operate internationally.

[952] 16 broker-dealer SBSDs + 1 broker-dealer MSBSP + 25 non-SBSD/MSBSP broker-dealers engaged in security-based swap activities = 42 broker-dealers engaged in security-based swap activities.

[953] 30 hours/year × 42 broker-dealers engaged in security-based swap activities = 1,260 hours/year. These internal hours likely would be performed by a compliance manager.

[954] 42 hours/year × 42 broker-dealers engaged in security-based swap activities = 1,764 hours/year. These internal hours likely would be performed by a compliance clerk.

[955] *See* paragraphs (a)(25), (a)(28), and (a)(30) of Rule 17a–3, as proposed to be amended (proposing recordkeeping requirements for Rule 18a–3 calculations, unverified transactions, and compliance with external business conduct requirements, respectively).

[956] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297.

[957] *See Trade Acknowledgment and Verification of Security-Based Swap Transactions,* 76 FR 3869–3870.

[958] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42443–42448.

[959] 60 hours × 17 broker-dealer SBSDs and broker-dealer MSBSPs = 1,020 hours. These internal hours likely would be performed by a compliance manager.

[960] 75 hours/year × 17 broker-dealer SBSDs and broker-dealer MSBSPs = 1,275 hours/year. These internal hours likely would be performed by a compliance clerk.

[961] *See* Rule 17a–3, as proposed to be amended (paragraph (a)(26) (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (a)(27) (proposed Rule 18a–4 reserve account computations); and paragraph (a)(29) (political contributions)).

[962] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297–70299.

[963] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42447.

[964] 60 hours × 16 broker-dealer SBSDs = 960 hours. These internal hours likely would be performed by a compliance manager.

[965] 75 hours/year × 16 broker-dealer SBSDs = 1,200 hours/year. These internal hours likely would be performed by a compliance clerk.

[966] *See* paragraph (a)(24) of Rule 17a–3, as proposed to be amended.

[967] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70294.

ANC broker-dealers (all of which are assumed to be dually registered as SBSDs), adding to the industry an initial burden of 200 hours [968] and an ongoing burden of 250 hours per year.[969]

Estimated Hours and Costs of Proposed Rule 18a–5

Dollar Costs. The Commission estimates that proposed Rule 18a–5 would cause a stand-alone SBSD or stand-alone 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 thirteen respondents (nine stand-alone SBSDs and four stand-alone MSBSPs), resulting in an estimated industry-wide initial burden of $13,000 [970] and an industry-wide ongoing burden of $60,450 per year.[971]

Proposed Rule 18a–5 is not expected to increase the initial and ongoing dollar costs that bank SBSDs and bank MSBSPs incur to purchase recordkeeping system software and for equipment and systems development. Banks are already subject to recordkeeping requirements by the prudential regulators,[972] so they already own or have established the requisite recordkeeping system software. Although bank SBSDs and bank 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.

Hour Burden. Proposed Rule 18a–5 would require thirteen types of records to be made and kept current by stand-alone SBSDs and stand-alone MSBSPs.[973] Proposed Rule 18a–5 imposes the burden to make and keep current these records, but does not require the firm to perform the underlying task.[974] Therefore, after consideration of the estimated burdens under Rule 17a–3, as proposed to be amended, the Commission estimates that paragraphs (a)(1) through (a)(10), (a)(12), (a)(15), and (a)(17) of proposed Rule 18a–5 would impose on each firm an initial burden of 260 hours and an ongoing annual burden of 325 hours. The Commission estimates that there are thirteen respondents (nine stand-alone SBSDs and four stand-alone MSBSPs), resulting in an estimated industry-wide initial burden of 3,380 hours [975] and an industry-wide ongoing annual burden of 4,225 hours.[976]

Proposed Rule 18a–5 would require three types of records to be made and kept current by stand-alone SBSDs.[977] Because the burden to run the applicable calculation or comply with the applicable standard is accounted for in the PRA estimates for proposed Rules 18a–4 [978] and 15Fh–6, [979] 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)(13), (a)(14), and (a)(16) of proposed Rule 18a–5 would impose an initial burden of sixty hours per firm and an ongoing annual burden of seventy-five hours per firm. The Commission estimates that there are nine stand-alone SBSDs, resulting in an industry-wide initial burden of 540 hours [980] and an industry-wide ongoing burden of 675 hours per year.[981]

Paragraph (a)(11) of proposed Rule 18a–5 would require ANC stand-alone SBSDs to make and keep current certain records relating to the monthly liquidity stress test.[982] Because the burden of actually performing the liquidity stress test and creating a liquidity funding plan is already accounted for in the PRA estimate for proposed Rule 18a–1,[983] the burden imposed by paragraph (a)(11) of proposed Rule 18a–5 is the requirement to make and keep current a written record of these tasks. The Commission estimates that paragraph (a)(11) would impose on each ANC broker-dealer an initial burden of twenty hours and an ongoing burden of twenty-five hours per year. The Commission estimates that there are six ANC stand-alone SBSDs, resulting in an industry-wide initial burden of 120 hours [984] and an industry-wide ongoing burden of 150 hours per year.[985]

Proposed Rule 18a–5 would require ten types of records to be made and kept current by bank SBSDs and bank MSBSPs, all of which are limited to the firm's business as an SBSD or MSBSP.[986] Proposed 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 proposed to be amended, the Commission estimates that paragraphs (b)(1) through (b)(8), (b)(11), and (b)(13) of proposed Rule 18a–5 would 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

[968] 20 hours × 10 ANC broker-dealers = 200 hours. These internal hours likely would be performed by a compliance manager.

[969] 25 hours/year × 10 ANC broker-dealers = 250 hours/year. These internal hours likely would be performed by a compliance clerk.

[970] $1,000 × 13 stand-alone SBSDs and stand-alone MSBSPs = $13,000.

[971] $4,650/year × 13 stand-alone SBSDs and stand-alone MSBSPs = $60,450/year.

[972] *See, e.g.,* 12 CFR 12.3 (Department of Treasury); 12 CFR 219.21 *et seq.* (Federal Reserve); 12 CFR 344.4 (FDIC).

[973] *See* proposed Rule 18a–5 (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) (proposed Rule 18a–3 calculations); paragraph (a)(15) (unverified transactions); paragraph (a)(17) (compliance with external business conduct standards)).

[974] In estimating the burden associated with proposed Rules 18a–5 and 18a–6, the Commission recognizes that entities that would register stand-alone SBSDs and stand-alone 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 is estimating the PRA burden for these entities based on the assumption that they currently keep no records.

[975] 260 hours × 13 stand-alone SBSDs and stand-alone MSBSPs = 3,380 hours. These internal hours likely would be performed by a compliance manager.

[976] 325 hours/year × 13 stand-alone SBSDs and stand-alone MSBSPs = 4,225 hours/year. These internal hours likely would be performed by a compliance clerk.

[977] *See* proposed Rule 18a–5 (paragraph (a)(13) (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (a)(14) (proposed Rule 18a–4 reserve account computations); and paragraph (a)(16) (political contributions)).

[978] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297–70299.

[979] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42447.

[980] 60 hours × 9 stand-alone SBSDs = 540 hours. These internal hours likely would be performed by a compliance manager.

[981] 75 hours/year × 9 stand-alone SBSDs = 675 hours/year. These internal hours likely would be performed by a compliance clerk.

[982] *See* paragraph (a)(11) of proposed Rule 18a–5.

[983] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70294.

[984] 20 hours × 6 ANC stand-alone SBSDs = 120 hours. These internal hours likely would be performed by a compliance manager.

[985] 25 hours/year × 6 ANC stand-alone SBSDs = 150 hours/year. These internal hours likely would be performed by a compliance clerk.

[986] *See* proposed Rule 18a–5 (paragraph (b)(1) (trade blotters); paragraph (b)(2) (general ledgers); 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) accountholder information); paragraph (b)(8) (associated person's application); paragraph (b)(11) (unverified transactions); and paragraph (b)(13) (compliance with external business conduct requirements)).

there are twenty-five respondents (twenty-five bank SBSDs and no bank MSBSPs), resulting in an estimated industry-wide initial burden of 5,000 hours [987] and an industry-wide ongoing burden of 6,250 hours per year.[988]

Proposed Rule 18a–5 would require three types of records to be made and kept current by bank SBSDs, all of which are limited to the firm's business as an SBSD.[989] Because the burden to run the applicable calculation or comply with the applicable standard is accounted for in the PRA estimates for proposed Rules 18a–4[990] and 15Fh-6,[991] 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 (b)(9), (b)(10), and (b)(12) of proposed Rule 18a–5 would impose an initial burden of sixty hours per firm and an ongoing annual burden of seventy-five hours per firm. The Commission estimates that there are twenty-five bank SBSDs, resulting in an industry-wide initial burden of 1,500 hours[992] and an industry-wide ongoing burden of 1,875 hours per year.[993]

2. Proposed Amendments to Rule 17a–4 and Proposed Rule 18a–6

The proposed amendments to Rule 17a–4 and proposed Rule 18a–6 would impose collection of information requirements that result in initial and ongoing burdens for broker-dealers, SBSDs, MSBSPs, and certain third-party custodians. Current Rule 17a–4 imposes an estimated annual burden of 254 hours per firm and $5,000 and a total industry burden of 1,196,086 hours and $23,545,000.[994] The Commission estimates that the proposed amendments to Rule 17a–4 would impose the following initial and annual burdens:

Burden	Initial burden	Annual burden
Recorded telephone calls [995]	*Per firm:* 13 hours	*Per firm:* 6 hours and $2,000
	Industry: 221 hours	*Industry:* 102 hours and $34,000.
New burdens applicable to all broker-dealers [996].	*Per firm:* 39 hours	*Per firm:* 18 hours and $360
	Industry: 1,638 hours	*Industry:* 756 hours and $15,120.
New burdens applicable to broker-dealer SBSDs and broker-dealer MSBSPs [997].	*Per firm:* 65 hours	*Per firm:* 30 hours and $600
	Industry: 1,105 hours	*Industry:* 510 hours and $10,200.
New burdens applicable to broker-dealer SBSDs [998].	*Per firm:* 39 hours	*Per firm:* 18 hours and $360
	Industry: 624 hours	*Industry:* 288 hours and $5,760.
New burdens applicable to ANC broker-dealers [999].	*Per firm:* 13 hours	*Per firm:* 6 hours and $120
	Industry: 130 hours	*Industry:* 60 hours and $1,200.
Total—Proposed amendments to Rule 17a–4	*Industry:* 3,718 hours	*Industry:* 1,716 hours and $66,280.

The Commission estimates that proposed Rule 18a–6 would impose the following initial and annual burdens:

Burden	Initial burden	Annual burden
Burdens applicable to stand-alone SBSDs and stand-alone MSBSPs [1000].	*Per firm:* 364 hours	*Per firm:* 280 hours and $5,720.
	Industry: 4,732 hours	*Industry:* 3,640 hours and $74,360.
Burdens applicable to stand-alone SBSDs [1001]	*Per firm:* 44 hours	*Per firm:* 30 hours and $360.
	Industry: 396 hours	*Industry:* 270 hours and $3,240.
Burdens applicable to ANC stand-alone SBSDs [1002].	*Per firm:* 31 hours	*Per firm:* 20 hours and $240.
	Industry: 186 hours	*Industry:* 120 hours and $1,440.
Burdens applicable to bank SBSDs and bank MSBSPs [1003].	*Per firm:* 247 hours	*Per firm:* 190 hours and $4,520.
	Industry: 6,175 hours	*Industry:* 4,750 hours and $113,000.
Burdens applicable to bank SBSDs [1004]	*Per firm:* 57 hours	*Per firm:* 40 hours and $480.
	Industry: 1,425 hours	*Industry:* 1,000 hours and $12,000.
Burdens applicable to third-party custodians [1005].	*Per firm:* 0 hours	*Per firm:* 2 hours.
	Industry: 0 hours	*Industry:* 38 hours.
Total—Proposed Rule 18a–6	*Industry:* 12,914 hours	*Industry:* 9,818 hours and $204,078.

[987] 200 hours × 25 bank SBSDs = 5,000 hours. These internal hours likely would be performed by a compliance manager.

[988] 250 hours/year × 25 bank SBSDs = 6,250 hours/year. These internal hours likely would be performed by a compliance clerk.

[989] *See* proposed Rule 18a–5 (paragraph (b)(9) (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (b)(10) (proposed Rule 18a–4 reserve account computations); and paragraph (b)(12) (political contributions)).

[990] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297–70299.

[991] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42447.

[992] 60 hours × 25 bank SBSDs = 1,500 hours. These internal hours likely would be performed by a compliance manager.

[993] 75 hours/year × 25 bank SBSDs = 1,875 hours/year. These internal hours likely would be performed by a compliance clerk.

[994] *See* Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–4* (Sept. 12, 2013), *available at http://www.reginfo.gov/public/do/DownloadDocument?documentID=422180&version=0.*

[995] *See* paragraph (b)(4) of Rule 17a–4, as proposed to be amended.

[996] *See* paragraphs (b)(1), (b)(8)(v) through (viii), (b)(8)(xvi), and (b)(14) of Rule 17a–4, as proposed to be amended.

[997] *See* paragraphs (b)(1), (b)(15), and (b)(16) of Rule 17a–4, as proposed to be amended.

[998] *See* paragraph (b)(1) of Rule 17a–4, as proposed to be amended.

[999] *See* paragraph (b)(1) of Rule 17a–4, as proposed to be amended.

Estimated Hours and Costs of Current Rule 17a–4

The Supporting Statement accompanying the most recent extension of Rule 17a–4's collection estimates that each registered broker-dealer spends 254 hours to ensure it is in compliance with Rule 17a–4 and produce records promptly when required, and $5,000 each year on physical space and computer hardware and software to store the requisite documents and information.[1006] Given that 4,545 broker-dealers were registered with the Commission as of April 1, 2013, current Rule 17a–4 creates an estimated industry-wide ongoing annual cost of 1,154,430 hours [1007] and $22,725,000.[1008]

Estimated Hours and Costs of Proposed Amendments to Rule 17a–4

Many of the proposed amendments to Rule 17a–4 are not expected to change the estimated burden imposed by Rule 17a–4. Most of the additional proposed amendments discussed in section II.A.3.b. of this release are largely clarifying changes that do not affect the Commission's burden estimate. Similarly, paragraph (m)(5) of Rule 17a–4, as proposed to be amended, which adds a definition for *business as such,*[1009] is a clarifying amendment that should not affect the rule's burden.

The Commission believes there is no burden associated with its proposal that a broker-dealer retain 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.[1010] Since Rule 17a–3 requires broker-dealers to make these records, the Commission understands that it is already industry practice for broker-dealers to also keep these records. In addition, Rule 17a–4 already requires broker-dealers to keep records containing substantially similar information,[1011] so that the same record would likely also include the information required by this proposed amendment to Rule 17a–4.

The Commission believes there is no burden associated with its proposal that a security-based swap customer or non-customer's written agreements be maintained with his or her account records,[1012] because the Commission understands that it is already industry practice to keep written agreements with the relevant person's account records.

Certain proposed amendments to Rule 17a–4 would require broker-dealer SBSDs and broker-dealer MSBSPs to retain certain new records but would no longer require them to retain other records required to be kept by non-SBSD/MSBSP broker-dealers. Specifically, broker-dealer SBSDs and broker-dealer MSBSPs must preserve proposed Form SBS instead of Form X–17A–5,[1013] possession or control information for security-based swap customers under proposed Rule 18a–4 instead of under Rule 15c3–3,[1014] and Forms SBSE–BD and SBSE–W instead of Forms BD and BDW.[1015] These proposed amendments are not expected to significantly change the number of documents that the broker-dealer must preserve, but simply the type of document that must be preserved—a factor that is not expected to affect Rule 17a–4's burden.

The Commission proposes to amend paragraph (b)(4) of Rule 17a–4 to require broker-dealer SBSDs and broker-dealer MSBSPs to retain telephone calls that have already been recorded and are related to the broker-dealer SBSD's and broker-dealer MSBSP's security-based swap business.[1016] Paragraph (b)(4) of Rule 17a–4, as proposed to be amended, only requires the retention of telephonic recordings the broker-dealer SBSD or broker-dealer MSBSP voluntarily chooses to record, so the Commission's burden estimate does not include the cost of recording phone calls. Therefore, the burdens imposed by the proposed amendment would be to provide adequate physical space and computer hardware and software for storage. The Commission estimates that the proposed amendment to paragraph (b)(4) of Rule 17a–4 would impose an initial burden of 13 hours per firm. The Commission estimates that there are seventeen respondents (sixteen broker-dealer SBSDs and one broker-dealer MSBSP), resulting in an estimated industry-wide initial burden of 221 hours.[1017]

The Commission estimates that each firm would incur an annual burden of approximately six 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 seventeen respondents (sixteen broker-dealer SBSDs and one broker-dealer MSBSP), resulting in an estimated industry-wide ongoing annual cost of 102 hours [1018] and $34,000.[1019]

The proposed amendments to Rule 17a–4 would add three types of records to be preserved by broker-dealers.[1020] Because the burden to create these records is already accounted for in the PRA estimates for Rule 17a–3,[1021] Rule 15c3–1,[1022] or in proposed Regulation SBSR,[1023] the burdens imposed by these new requirements are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. The Commission estimates that the proposed amendments to paragraphs (b)(8)(v)–

[1000] *See* paragraphs (a)(1), (b)(1)(i) through (ix), (b)(1)(xi) through (xiii), (c), (d)(1), (d)(2)(i), and (d)(3)(i) of proposed Rule 18a–6.

[1001] *See* paragraph (b)(1)(i) of proposed Rule 18a–6.

[1002] *See* paragraphs (b)(1)(i) and (b)(1)(x) of proposed Rule 18a–6.

[1003] *See* paragraphs (a)(2), (b)(2)(i) through (iv), (b)(2)(vi) through (viii), (d)(1), (d)(2)(ii), and (d)(3)(ii) of proposed Rule 18a–6.

[1004] *See* paragraphs (b)(2)(i) and (b)(2)(v) of proposed Rule 18a–6.

[1005] *See* paragraph (f) of proposed Rule 18a–6.

[1006] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–4.*

[1007] 254 hours/year × 4,545 registered broker-dealers = 1,154,430 hours/year.

[1008] $5,000/year × 4,545 registered broker-dealers = $22,725,000/year.

[1009] *See* paragraph (m)(5) of Rule 17a–4, as proposed to be amended.

[1010] *See* paragraph (b)(1) of Rule 17a–4, as proposed to be amended (cross-referencing paragraph (a)(11) of Rule 17a–3, as proposed to be amended (proof of money balances)).

[1011] *See* Rule 17a–4, as proposed to be amended (paragraph (b)(5) (trial balances, computations of aggregate indebtedness and net capital); paragraph (b)(8)(i) (money balance and position in securities accounts payable to customers); paragraph (b)(8)(i) (money balance and position in securities accounts payable to non-customers)).

[1012] *See* paragraph (b)(4) of Rule 17a–4, as proposed to be amended.

[1013] *See* paragraph (b)(8) of Rule 17a–4, as proposed to be amended.

[1014] *See* paragraph (b)(8)(xiv) of Rule 17a–4, as proposed to be amended.

[1015] *See* paragraph (d) of Rule 17a–4, as proposed to be amended.

[1016] *See* paragraph (b)(4) of Rule 17a–4, as proposed to be amended.

[1017] 13 hours × 17 broker-dealer SBSDs and broker-dealer MSBSPs = 221 hours. These internal hours likely would be performed by a senior database administrator.

[1018] 6 hours × 17 broker-dealer SBSDs and broker-dealer MSBSPs = 102 hours. These internal hours likely would be performed by a compliance clerk.

[1019] $2,000 × 17 broker-dealer SBSDs and broker-dealer MSBSPs = $34,000.

[1020] *See* Rule 17a–4, as proposed to be amended (paragraph (b)(8)(v) through (viii) (identifying information about swaps); paragraph (b)(8)(xvi) (risk margin calculation); and paragraph (b)(14) (Regulation SBSR information)).

[1021] *See id. See also Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–3.*

[1022] *See* Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 15c3–1* (July 1, 2010), *available at http://www.reginfo.gov/public/do/DownloadDocument?documentID=184515&version=1.*

[1023] *See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* 75 FR 75246–75250.

(viii) and proposed paragraphs (b)(8)(xvi) and (b)(14) of Rule 17a–4 would impose an initial burden of thirty-nine hours per firm and an ongoing annual burden of eighteen hours and $360 per firm. The Commission estimates that there are forty-two respondents—sixteen broker-dealer SBSDs, one broker-dealer MSBSP, and twenty-five non-SBSD/MSBSP broker-dealers engaged in security-based swap activities.[1024] Thus, these proposed amendments would add to the industry an estimated initial burden of 1,638 hours [1025] and an ongoing annual burden of 756 hours [1026] and $15,120.[1027]

The proposed amendments to Rule 17a–4 would add five types of records to be preserved by broker-dealer SBSDs and broker-dealer MSBSPs.[1028] Because the burden to create these records is accounted for in the PRA estimates for Rule 17a–3,[1029] or proposed Rules 15Fh–1 through 15Fh-5 and 15Fk–1,[1030] the burdens imposed by these proposed amendments are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. The Commission estimates that the proposed amendments to paragraph (b)(1) and proposed new paragraphs (b)(15) and (b)(16) of Rule 17a–4 would impose an initial burden of sixty-five hours per firm and an ongoing annual burden of thirty hours and $600 per firm. The Commission estimates that there are seventeen respondents (sixteen broker-dealer SBSDs and one broker-dealer MSBSP), adding to the industry an initial burden of 1,105 hours[1031] and an ongoing annual burden of 510 hours [1032] and $10,200.[1033]

The proposed amendments to Rule 17a–4 would add three types of records to be preserved by broker-dealer SBSDs.[1034] Because the burden to create these records is accounted for in the PRA estimate for Rule 17a–3, as proposed to be amended,[1035] the burdens imposed by these new requirements are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. The Commission estimates that the proposed amendments to paragraph (b)(1) of Rule 17a–4 would impose an initial burden of thirty-nine hours per firm and an ongoing annual burden of eighteen hours and $360 per firm. The Commission estimates that there are 16 broker-dealer SBSDs, adding to the industry an initial burden of 624 hours[1036] and an ongoing annual burden of 288 hours[1037] and $5,760.[1038]

Paragraph (b)(1) of Rule 17a–4, as proposed to be amended, would require ANC broker-dealers to preserve certain records relating to the firm's monthly liquidity stress test.[1039] Because the burden to create this record is accounted for in the PRA estimate for Rule 17a–3, as proposed to be amended,[1040] the burdens this new requirement would impose on ANC broker-dealers are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. The Commission estimates that the proposed amendment to paragraph (b)(1) of Rule 17a–4 would impose an initial burden of thirteen hours per firm and an ongoing annual burden of six hours and $120 per firm. The Commission estimates that there are ten ANC broker-dealers (all of which are assumed to be dually registered as SBSDs), adding to the industry an initial burden of 130 hours[1041] and an ongoing annual burden of sixty hours[1042] and $1,200.[1043]

Estimated Hours and Costs of Proposed Rule 18a–6

Proposed Rule 18a–6 would require twenty-seven types of records to be preserved by stand-alone SBSDs and stand-alone MSBSPs.[1044] Proposed Rule

[1024] 16 broker-dealer SBSDs + 1 broker-dealer MSBSP + 25 non-SBSD/MSBSP broker-dealers engaged in security-based swap activities = 42 broker-dealers engaged in security-based swap activities.

[1025] 39 hours × 42 respondents = 1,638 hours. These internal hours likely would be performed by a senior database administrator.

[1026] 18 hours/year × 42 respondents = 756 hours/year. These internal hours likely would be performed by a compliance clerk.

[1027] $360 × 42 respondents = $15,120.

[1028] *See* Rule 17a–4, as proposed to be amended (paragraph (b)(1), cross-referencing paragraph (a)(25) of Rule 17a–3, as proposed to be amended (proposed Rule 18a–3 calculations); paragraph (b)(1), cross-referencing paragraph (a)(28) of Rule 17a–3, as proposed to be amended (unverified transactions); paragraph (b)(1), cross-referencing paragraph (a)(30) of Rule 17a–3, as proposed to be amended (compliance with external business conduct standards); paragraph (b)(15) (documents and notices related to the external business conduct standards); and paragraph (b)(16) (special entity documents).

[1029] *See* Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–3. See also* section IV.D.1. of this release.

[1030] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42443–42448.

[1031] 65 hours × 17 broker-dealer SBSDs and broker-dealer MSBSPs = 1,105 hours. These internal hours likely would be performed by a senior database administrator.

[1032] 30 hours/year × 17 broker-dealer SBSDs and broker-dealer MSBSPs = 510 hours/year. These internal hours likely would be performed by a compliance clerk.

[1033] $600 × 17 broker-dealer SBSDs and broker-dealer MSBSPs = $10,200.

[1034] *See* paragraph (b)(1) of Rule 17a–4, as proposed to be amended (cross-referencing paragraph (a)(26) of Rule 17a–3, as proposed to be amended (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (a)(27) of Rule 17a–3, as proposed to be amended (proposed Rule 18a–4 reserve account computations); and paragraph (a)(29) of Rule 17a–3, as proposed to be amended (political contributions)).

[1035] *See* section IV.D.1. of this release.

[1036] 39 hours × 16 broker-dealer SBSDs = 624 hours. These internal hours likely would be performed by a senior database administrator.

[1037] 18 hours/year × 16 broker-dealer SBSDs = 288 hours/year. These internal hours likely would be performed by a compliance clerk.

[1038] $360 × 16 broker-dealer SBSDs = $5,760.

[1039] *See* paragraph (b)(1) of Rule 17a–4, as proposed to be amended (cross-referencing paragraph (a)(24) of Rule 17a–3, as proposed to be amended).

[1040] *See* section IV.D.1. of this release.

[1041] 13 hours × 10 ANC broker-dealers = 130 hours. These internal hours likely would be performed by a compliance manager and a senior database administrator.

[1042] 6 hours/year × 10 ANC broker-dealers = 60 hours/year. These internal hours likely would be performed by a compliance clerk.

[1043] $120 × 10 ANC broker-dealers = $1,200.

[1044] *See* proposed Rule 18a–6 (paragraph (a)(1), cross-referencing paragraph (a)(1) of proposed Rule 18a–5 (trade blotters); paragraph (a)(1), cross-referencing paragraph (a)(2) of proposed Rule 18a–5 (general ledgers); paragraph (a)(1), cross-referencing paragraph (a)(3) of proposed Rule 18a–5 (ledgers of customer and non-customer accounts); paragraph (a)(1), cross-referencing paragraph (a)(4) of proposed Rule 18a–5 (stock record); paragraph (a)(1), cross-referencing paragraph (a)(5) of proposed Rule 18a–5 (memoranda of proprietary orders); paragraph (a)(1), cross-referencing paragraph (a)(6) of proposed Rule 18a–5 (confirmations); paragraph (a)(1), cross-referencing paragraph (a)(7) of proposed Rule 18a–5 (accountholder information); paragraph (a)(1), cross-referencing paragraph (a)(8) of proposed Rule 18a–5 (options positions); paragraph (a)(1), cross-referencing paragraph (a)(9) of proposed Rule 18a–5 (trial balances and computation of net capital); paragraph (a)(1), cross-referencing paragraph (a)(12) of proposed Rule 18a–5 (proposed Rule 18a–3 calculations); paragraph (a)(1), cross-referencing paragraph (a)(15) of proposed Rule 18a–5 (unverified transactions); paragraph (a)(1), cross-referencing paragraph (a)(17) of proposed Rule 18a–5 (compliance with external 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)).

18a–6 does not require the firm to create these records or perform the underlying task, so the burdens imposed by these requirements would be to provide adequate physical space and computer hardware and software for storage, preserve these records for the requisite time period, and produce them when requested.[1045] The Commission estimates that the proposed record preservation requirements applicable to stand-alone SBSDs and stand-alone MSBSPs would impose an initial burden of 364 hours,[1046] and an ongoing annual burden of 280 hours and $5,720 per firm. The Commission estimates that there are thirteen respondents (nine stand-alone SBSDs and four stand-alone MSBSPs), resulting in an estimated industry-wide initial burden of 4,732 hours,[1047] and an industry-wide ongoing annual burden of 3,640 hours[1048] and $74,360.[1049]

Proposed Rule 18a–6 would require three types of records to be preserved by stand-alone SBSDs.[1050] Because the burden to create these records is accounted for in the PRA estimate for proposed Rule 18a–5,[1051] the burdens imposed by these requirements are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. The Commission estimates that the relevant portions of paragraph (b)(1)(i) of proposed Rule 18a–6 would impose an initial burden of forty-four hours per firm,[1052] and an ongoing annual burden of thirty hours and $360 per firm. The Commission estimates that there are nine stand-alone SBSDs, resulting in an industry-wide initial burden of 396 hours[1053] and an industry-wide ongoing annual burden of 270 hours[1054] and $3,240.[1055]

Proposed Rule 18a–6 would require two types of records to be preserved by ANC stand-alone SBSDs.[1056] Because the burden of actually performing the underlying task and creating the written record is already accounted for in the PRA estimates for proposed Rules 18a–1 [1057] and 18a–5,[1058] the burden is the requirement to preserve these records for at least three years. The Commission estimates that paragraph (b)(1)(x) and paragraph (b)(1)(i)'s cross-reference to paragraph (a)(11) of proposed Rule 18a–5 would impose an initial burden of thirty-one hours [1059] and an ongoing annual burden of twenty hours and $240 per ANC stand-alone SBSD. The Commission estimates that there are six ANC stand-alone SBSDs, resulting in an industry-wide initial burden of 186 hours [1060] and an industry-wide ongoing annual burden of 120 hours [1061] and $1,440.[1062]

Proposed Rule 18a–6 would require eighteen types of records to be preserved by bank SBSDs and bank MSBSPs, all of which are limited to the firm's business as an SBSD or MSBSP.[1063] Proposed Rule 18a–6 does not require the firm to create these records or perform the underlying task, so the burdens imposed by these requirements are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. Therefore, after consideration of the similar burdens imposed by Rule 17a–4, as proposed to be amended, the Commission estimates that proposed Rule 18a–6 would impose on bank SBSDs and bank MSBSPs an initial burden of 247 hours per firm [1064] and an ongoing burden of 190 hours and $4,520 per firm. The Commission estimates that there are twenty-five respondents (twenty-five bank SBSDs and no bank MSBSPs), resulting in an estimated industry-wide initial burden of 6,175 hours [1065] and an industry-wide ongoing annual burden of 4,750 hours [1066] and $113,000.[1067]

Proposed Rule 18a–6 would require four types of records to be preserved by bank SBSDs, all of which are limited to the firm's business as an SBSD.[1068] Because the burden to perform the underlying task or create these records is accounted for in the PRA estimates

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[1045] *See supra* note 974.

[1046] The Commission believes that any initial dollar cost associated with proposed Rule 18a–6 is already accounted for in the PRA estimate for proposed Rule 18a–5, which includes the cost of recordkeeping system software.

[1047] 364 hours × 13 stand-alone SBSDs and stand-alone MSBSPs = 4,732 hours. These internal hours likely would be performed by a senior database administrator.

[1048] 280 hours/year × 13 stand-alone SBSDs and stand-alone MSBSPs = 3,640 hours/year. These internal hours likely would be performed by a compliance clerk.

[1049] $5,720/year × 13 stand-alone SBSDs and stand-alone MSBSPs = $74,360/year.

[1050] *See* paragraph (b)(1)(i) of proposed Rule 18a–6 (cross-referencing paragraph (a)(13) of proposed Rule 18a–5 (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (a)(14) of proposed Rule 18a–5 (proposed Rule 18a–4 reserve account computations); and paragraph (a)(16) of proposed Rule 18a–5 (political contributions)).

[1051] *See* section IV.D.1. of this release.

[1052] The Commission believes that any initial dollar cost associated with proposed Rule 18a–6 is already accounted for in the PRA estimate for proposed Rule 18a–5, which includes the cost of recordkeeping system software.

[1053] 44 hours × 9 stand-alone SBSDs = 396 hours. These internal hours likely would be performed by a senior database administrator.

[1054] 30 hours/year × 9 stand-alone SBSDs = 270 hours/year. These internal hours likely would be performed by a compliance clerk.

[1055] $360/year × 9 stand-alone SBSDs = $3,240/year.

[1056] *See* proposed Rule 18a–6 (paragraph (b)(1)(i), cross-referencing paragraph (a)(11) of proposed Rule 18a–5 (liquidity stress test); and paragraph (b)(1)(x) (credit risk determinations)).

[1057] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70294.

[1058] *See* section IV.D.1. of this release.

[1059] The Commission believes that any initial dollar cost associated with proposed Rule 18a–6 is already accounted for in the PRA estimate for proposed Rule 18a–5, which includes the cost of recordkeeping system software.

[1060] 31 hours × 6 ANC stand-alone SBSDs = 186 hours. These internal hours likely would be performed by a senior database administrator.

[1061] 20 hours/year × 6 ANC stand-alone SBSDs = 120 hours/year. These internal hours likely would be performed by a compliance clerk.

[1062] $240/year × 6 ANC stand-alone SBSDs = $1,440/year.

[1063] *See* proposed Rule 18a–6 (paragraph (a)(2), cross-referencing paragraph (b)(1) of proposed Rule 18a–5 (trade blotters); paragraph (a)(2), cross-referencing paragraph (b)(2) of proposed Rule 18a–5 (ledgers of security-based swap customers and non-customers); paragraph (a)(2), cross-referencing paragraph (b)(3) of proposed Rule 18a–5 (stock records); paragraph (b)(2)(i), cross-referencing paragraph (b)(4) of proposed Rule 18a–5 (memoranda of brokerage orders); paragraph (b)(2)(i), cross-referencing paragraph (b)(5) of proposed Rule 18a–5 (memoranda of proprietary orders); paragraph (b)(2)(i), cross-referencing paragraph (b)(6) of proposed Rule 18a–5 (confirmations); paragraph (b)(2)(i), cross-referencing paragraph (b)(7) of proposed Rule 18a–5 (accountholder information); paragraph (b)(2)(i), cross-referencing paragraph (b)(11) of proposed Rule 18a–5 (unverified transactions); paragraph (b)(2)(i), cross-referencing paragraph (b)(13) of proposed Rule 18a–5 (compliance with external business conduct requirements); paragraph (b)(2)(ii) (communications); paragraph (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)).

[1064] The Commission believes that any initial dollar cost associated with proposed Rule 18a–6 is already accounted for in the PRA estimate for proposed Rule 18a–5, which includes the cost of recordkeeping system software.

[1065] 247 hours × 25 bank SBSDs = 6,175 hours. These internal hours likely would be performed by a senior database administrator.

[1066] 190 hours/year × 25 bank SBSDs = 4,750 hours/year. These internal hours likely would be performed by a compliance clerk.

[1067] $4,520/year × 25 bank SBSDs = $113,000/year.

[1068] *See* proposed Rule 18a–6 (paragraph (b)(2)(i), cross-referencing paragraph (b)(9) (compliance with proposed Rule 18a–4 possession or control requirements) of proposed Rule 18a–5; paragraph (b)(2)(i), cross-referencing paragraph (b)(10) (proposed Rule 18a–4 reserve account computations) of proposed Rule 18a–5; paragraph (b)(2)(i), cross-referencing paragraph (b)(12) (political contributions) of proposed Rule 18a–5; and paragraph (b)(2)(v) (proposed Rule 18a–4 reserve account computations)).

for proposed Rule 18a–4 [1069] and Rule 18a–5, as proposed to be amended,[1070] the burdens imposed by these new requirements are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. The Commission estimates that paragraphs (b)(9), (b)(10), and (b)(12) of proposed Rule 18a–6 would impose an initial burden of fifty-seven hours per firm [1071] and an ongoing annual burden of forty hours and $480 per firm. The Commission estimates that there are twenty-five bank SBSDs, resulting in an industry-wide initial burden of 1,425 hours [1072] and an industry-wide ongoing annual burden of 1,000 hours [1073] and $12,000.[1074]

Paragraph (f) of proposed Rule 18a–6 would require third-party custodians for non-broker-dealer SBSDs and non-broker-dealer MSBSPs to file with the Commission a written undertaking and surrender the SBSD or MSBSP's records upon the Commission's request.[1075] 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 thirty-eight non-broker-dealer SBSDs and non-broker-dealer MSBSPs would retain a third-party custodian, resulting in nineteen written undertakings. The Commission estimates paragraph (f) of proposed Rule 18a–6 would impose an ongoing annual burden of two hours per written undertaking, resulting in an industry-wide ongoing burden of thirty-eight hours per year.[1076]

3. Proposed Amendments to Rule 17a–5 and Proposed Rule 18a–7

The proposed amendments to Rule 17a–5 and proposed Rule 18a–7 would impose collection of information requirements that result in annual time burdens for broker-dealers, SBSDs, and MSBSPs. The Commission estimates that the proposed amendments to Rule 17a–5 would impose the following initial and annual burdens:

Burden	Initial burden	Annual burden
Liquidity stress test [1077]	*Per firm:* 0 hours	*Per firm:* 12 hours.
	Industry: 0 hours	*Industry:* 120 hours.
Form SBS (ANC broker-dealer SBSDs) [1078]	*Per firm:* 25 hours	*Per firm:* 228 hours.
	Industry: 250 hours	*Industry:* 2,280 hours.
Form SBS (non-model broker-dealer SBSDs) [1079].	*Per firm:* 50 hours	*Per firm:* 240 hours.
	Industry: 300 hours	*Industry:* 1,440 hours.
Form SBS (broker-dealer MSBSPs) [1080]	*Per firm:* 40 hours	*Per firm:* 210 hours.
	Industry: 40 hours	*Industry:* 210 hours.
Total—Proposed amendments to Rule 17a–5	*Industry:* 590 hours	*Industry:* 4,050 hours.

The Commission estimates that proposed Rule 18a–7 would impose the following initial and annual burdens:

Burden	Initial burden	Annual burden
Additional ANC reports [1081]	*Per firm:* 0 hours	*Per firm:* 132 hours.
	Industry: 0 hours	*Industry:* 792 hours.
Customer statements [1082]	*Per firm:* 10 hours	*Per firm:* 1 hours.
	Industry: 130 hours	*Industry:* 13 hours.
Annual report (stand-alone SBSDs) [1083]	*Per firm:* 0 hours	*Per firm:* 70 hours and $5.60
	Industry: 0 hours	*Industry:* 630 hours and $50.40.
Annual report (stand-alone MSBSPs) [1084]	*Per firm:* 0 hours	*Per firm:* 10 hours and $5.60.
	Industry: 0 hours	*Industry:* 40 hours and $22.40.
Statement regarding accountant [1085]	*Per firm:* 10 hours	*Per firm:* 2 hours and 46.
	Industry: 130 hours	*Industry:* 26 hours and $5.98.
Engagement of accountant (stand-alone SBSDs) [1086].	*Per firm:* 0 hours	*Per firm:* $450,000.
	Industry: 0 hours	*Industry:* $4,050,000.
Engagement of accountant (stand-alone MSBSPs) [1087].	*Per firm:* 0 hours	*Per firm:* $300,000.
	Industry: 0 hours	*Industry:* $1,200,000.
Notice of change of fiscal year [1088]	*Per firm:* 0 hours	*Per firm:* 1 hour and 46.
	Industry: 0 hours	*Industry:* 1 hour and 46.
Form SBS (stand-alone SBSDs) [1089]	*Per firm:* 160 hours	*Per firm:* 192 hours.
	Industry: 1,440 hours	*Industry:* 1,728 hours.
Form SBS (stand-alone MSBSPs) [1090]	*Per firm:* 40 hours	*Per firm:* 48 hours.
	Industry: 160 hours	*Industry:* 192 hours.

[1069] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297–70299.

[1070] *See* section IV.D.1. of this release.

[1071] The Commission believes that any initial dollar cost associated with proposed Rule 18a–6 is already accounted for in the PRA estimate for proposed Rule 18a–5, which includes the cost of recordkeeping system software.

[1072] 57 hours × 25 bank SBSDs = 1,425 hours. These internal hours likely would be performed by a compliance manager and a senior database administrator.

[1073] 40 hours/year × 25 bank SBSDs = 1,000 hours/year. These internal hours likely would be performed by a compliance clerk.

[1074] $480/year × 25 bank SBSDs = $12,000/year.

[1075] *See* paragraph (f) of proposed Rule 18a–6.

[1076] 2 hours/year × 19 written undertakings = 38 hours/year. These internal hours likely would be performed by an attorney.

[1077] *See* paragraph (a)(5)(vii) of Rule 17a–5, as proposed to be amended.

[1078] *See* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended.

[1079] *See* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended.

[1080] *See* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended.

Burden	Initial burden	Annual burden
Form SBS (bank SBSDs) [1091]	*Per firm:* 36 hours *Industry:* 900 hours	*Per firm:* 16 hours. *Industry:* 400 hours.
Total—Proposed Rule 18a–7	*Industry:* 2,890 hours	*Industry:* 3,978 hours and $5,250,079.24.

Estimated Hours and Costs of Proposed Amendments to Rule 17a–5

No Change in Estimated Burden. Many of the proposed amendments to Rule 17a–5 are not expected to change the estimated burden imposed by Rule 17a–5. Most of the additional proposed amendments discussed in section II.B.3.b. of this release are clarifying changes that should not affect the Commission's burden estimate.

The Commission is proposing that the financial report prepared by Form SBS filers include statements and supporting schedules from proposed Form SBS instead of from Form X–17A–5.[1092] This is not so much a new burden as a different burden, since in the absence of this proposed amendment, these firms would be required to file statements and supporting schedules from Form X–17A–5 instead. In addition, the burden of preparing these statements and supporting schedules is already accounted for in the PRA burden for proposed Form SBS (discussed below).

The Commission does not estimate an additional burden associated with its proposal that the compliance report include statements as to a broker-dealer SBSD's compliance with proposed Rule 18a–4,[1093] because the burden to comply with proposed Rule 18a–4 is largely already accounted for in the PRA estimate for proposed Rule 18a–4.[1094] To the extent that the burden is not already accounted for in the PRA estimate for proposed Rule 18a–4, the Commission believes that broker-dealer SBSDs and broker-dealer MSBSPs would already have a system in place for confirming compliance with proposed Rule 18a–4, in accordance with best practices. In addition, the Commission believes that the sixteen broker-dealers expected to register as SBSDs should already have procedures in place for confirming compliance since they are already required to confirm compliance with analogous Rule 15c3–3 (which Rule 18a–4 is modeled on).

The Commission is proposing to amend Rule 17a–5 to require that broker-dealers attach Part III of Form X–17A–5 to the annual report.[1095] However, the Commission does not expect this amendment to increase Rule 17a–5's burden, since broker-dealers currently file Part III with their audited annual report pursuant to staff guidance and Rule 617.[1096]

Liquidity Stress Test. The Commission proposes to add paragraph (a)(5)(vii) to Rule 17a–5, which would require ANC broker-dealers to file the results of the firm's monthly liquidity stress test with the Commission.[1097] Because the burden of actually performing the liquidity stress test and creating a liquidity funding plan is already accounted for in the PRA estimate for the proposed amendments to Rule 15c3–1,[1098] the burden imposed by proposed paragraph (a)(5)(vii) is the requirement to file a copy of the results with the Commission. The Commission estimates that paragraph (a)(5)(vii) to Rule 17a–5, as proposed to be amended, would impose an annual burden of twelve hours per ANC broker-dealer.[1099] The Commission estimates that there are ten ANC broker-dealers (all of which are assumed to be dually registered as SBSDs), resulting in an industry-wide ongoing burden of 120 hours per year.[1100]

Proposed Form SBS. Paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended, would require broker-dealer SBSDs and broker-dealer MSBSPs to file proposed Form SBS monthly instead of filing the applicable part of Form X–17A–5 quarterly.[1101] Part II, Part IIA, and Part II CSE of Form X–17A–5 each impose a different burden on respondents due to their varying lengths and calculations, so the burden of filing proposed Form SBS depends on which part of Form X–17A–5 the firm is currently required to file.

ANC broker-dealer SBSDs would be required to file proposed Form SBS instead of Part II CSE of Form X–17A–5. Although proposed Form SBS is modeled on Part II CSE, the burden on ANC broker-dealer SBSDs would increase, because ANC broker-dealer SBSDs would file monthly instead of quarterly and would complete additional sections and line items eliciting more detail about their security-based swap and swap activities.[1102] In consideration of these additional requirements, the Commission estimates that the requirement for ANC broker-dealer SBSDs to file proposed Form SBS every month would add an initial burden of twenty-five hours per firm and an ongoing annual burden of 228 hours per firm. The Commission estimates that there are ten ANC broker-dealer SBSDs, adding to the industry an initial burden

[1081] *See* paragraph (a)(3) of proposed Rule 18a–7.

[1082] *See* paragraph (b) of proposed Rule 18a–7.

[1083] *See* paragraphs (c) and (d) of proposed Rule 18a–7.

[1084] *See* paragraphs (c) and (d) of proposed Rule 18a–7.

[1085] *See* paragraph (e) of proposed Rule 18a–7.

[1086] *See* paragraph (f) of proposed Rule 18a–7.

[1087] *See* paragraph (f) of proposed Rule 18a–7.

[1088] *See* paragraph (j) of proposed Rule 18a–7.

[1089] *See* paragraph (a)(1) of proposed Rule 18a–7.

[1090] *See* paragraph (a)(1) of proposed Rule 18a–7.

[1091] *See* paragraph (a)(2) of proposed Rule 18a–7.

[1092] *See* paragraph (d)(2) of Rule 17a–5, as proposed to be amended.

[1093] *See* paragraph (d)(3) of Rule 17a–5, as proposed to be amended.

[1094] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297–70299.

[1095] *See* paragraph (e)(2) of Rule 17a–5, as proposed to be amended.

[1096] *See* 17 CFR 249.617; Commission, Division of Trading and Markets, *Broker-Dealer Notices and Reports, available at http://www.sec.gov/divisions/marketreg/bdnotices.htm.* In addition, Part III of Form X–17A–5, as proposed to be amended, would add a reference to Rule 17a–12, which applies to OTC derivatives dealers. Rule 17a–12 does not explicitly require OTC derivatives dealers to complete Part III of Form X–17A–5, but this proposed amendment to Part III of Form X–17A–5 is not expected to result in a burden increase since all [four] OTC derivatives dealers already voluntarily file Part III with their audited annual reports.

[1097] *See* paragraph (a)(5)(vii) of Rule 17a–5, as proposed to be amended.

[1098] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70294.

[1099] 1 hour/filing × 12 months/year = 12 hours/year. These internal hours likely would be performed by a compliance manager.

[1100] 12 hours/year × 10 ANC broker-dealers = 120 hours/year. These internal hours likely would be performed by a compliance manager.

[1101] *Compare* 17 CFR 240.17a–5(a)(3)(ii) and (iii), *with* paragraph (a)(4)(iv) of Rule 17a–5, as proposed to be amended.

[1102] ANC broker-dealer SBSDs would be required to complete the following new sections: (1) 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, Appendix A; (2) Information for Possession or Control Requirements under Rule 18a–4; (3) Schedule 1—Aggregate Securities, Commodities, and Swaps Positions; and (4) Schedule 4—Geographic Distribution of Derivatives Exposures for Ten Largest Countries.

of 250 hours[1103] and an ongoing burden of 2,280 hours per year.[1104]

Non-model broker-dealer SBSDs would be required to file proposed Form SBS instead of Part II or Part IIA of Form X–17A–5. Given that SBSDs are expected to be larger and relatively sophisticated firms, the Commission assumes that all non-model broker-dealer SBSDs are carrying firms that file Part II. Although sections of Part II are also found in proposed Form SBS, the burden on non-model broker-dealer SBSDs would increase (but not as much as for ANC broker-dealer SBSDs), because non-model broker-dealer SBSDs would file monthly instead of quarterly and would complete additional sections and line items eliciting more detail about their security-based swap and swap activities.[1105] In consideration of these additional requirements, the Commission estimates that the requirement for non-model broker-dealer SBSDs to file proposed Form SBS every month would add an initial burden of fifty hours per firm and an ongoing annual burden of 240 hours per firm. The Commission estimates that there are six non-model broker-dealer SBSDs, adding to the industry an initial burden of 300 hours[1106] and an ongoing burden of 1,440 hours per year.[1107]

Broker-dealer MSBSPs would be required to file proposed Form SBS instead of Part II or Part IIA of Form X–17A–5. 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 proposed Form SBS, the burden on broker-dealer MSBSPs would increase (but not as much as for broker-dealer SBSDs), because broker-dealer MSBSPs would file monthly instead of quarterly and would complete additional sections and line items eliciting more detail about their security-based swap and swap activities.[1108] In consideration of these additional requirements, the Commission estimates that the requirement for broker-dealer MSBSPs to file proposed Form SBS every month would add an initial burden of forty hours per firm and an ongoing annual burden of 210 hours per firm. The Commission estimates that there would be one broker-dealer MSBSP, such that the estimated burden on the industry would be the same as for a single broker-dealer MSBSP.

Estimated Hours and Costs of Proposed Rule 18a–7

Proposed Rule 18a–7, which is modeled on Rule 17a–5, as proposed to be amended, would require non-broker-dealer SBSDs and non-broker-dealer MSBSPs to satisfy certain reporting requirements.[1109]

Additional ANC reports. Paragraph (a)(3) of proposed Rule 18a–7 would require ANC stand-alone SBSDs to periodically file certain additional reports relating to their use of internal models to calculate net capital.[1110] 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,[1111] as well as the proposal to amend Rule 17a–5 to require ANC broker-dealers to file the results of their monthly liquidity stress tests with the additional ANC reports,[1112] the Commission estimates that paragraph (a)(3) of proposed Rule 18a–7 would impose an annual burden of 132 hours per ANC stand-alone SBSD.[1113] The Commission estimates that there are six ANC stand-alone SBSDs, resulting in an industry-wide ongoing burden of 792 hours per year.[1114]

Customer Statements. Paragraph (b) of proposed Rule 18a–7 would require stand-alone SBSDs and stand-alone MSBSPs to disclose certain financial statements on their Internet Web

[1103] 25 hours × 10 ANC broker-dealer SBSDs = 250 hours. These internal hours likely would be performed by a compliance manager.

[1104] 228 hours/year × 10 ANC broker-dealer SBSDs = 2,280 hours/year. These internal hours likely would be performed by a compliance manager.

[1105] Non-model broker-dealer SBSDs would 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 the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Appendix A; (5) Information for Possession or Control Requirements under Rule 18a–4; (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 SBSDs also registered as FCMs would be required to file the following sections not included on Part II, but which the CFTC already requires or has proposed to require 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)(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 proposed Form SBS.

[1106] 50 hours × 6 non-model broker-dealer SBSDs = 300 hours. These internal hours likely would be performed by a compliance manager.

[1107] 240 hours/year × 6 non-model broker-dealer SBSDs = 1,440 hours/year. These internal hours likely would be performed by a compliance manager.

[1108] Broker-dealer MSBSPs would be required to complete the following new sections: (1) Computation of Tangible Net Worth (which is only 3 lines long); (2) Financial and Operational Data—Operational Deductions from Capital—Note A; (3) Financial and Operational Data—Potential Operational Charges Not Deducted from Capital—Note B; (4) Computation for Determination of PAB Requirements; (5) Schedule 1—Aggregate Securities, Commodities, and Swaps Positions; (6) Schedule 2—Credit Concentration Report for Fifteen Largest Exposures in Derivatives; (7) Schedule 3—Portfolio Summary of Derivatives Exposures by Internal Credit Rating; and (8) Schedule 4—Geographic Distribution of Derivatives Exposures for Ten Largest Countries. In addition, broker-dealer MSBSPs also registered as FCMs would be required to file the following sections not included on Part II, but which the CFTC already requires or has proposed to require 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)(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 proposed Form SBS.

[1109] *See* proposed Rule 18a–7.

[1110] *See* paragraph (a)(3) of proposed Rule 18a–7.

[1111] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–5* (4 hours/monthly report × 12 months/year + 8 hours/quarterly report × 4 quarters/year + 40 hours/annual report = 120 hours/year).

[1112] *See* paragraph (a)(5)(vii) of Rule 17a–5, as proposed to be amended.

[1113] 120 hours/year + 1 hour/liquidity stress test filing × 12 months/year = 132 hours/year. These internal hours likely would be performed by a compliance manager.

[1114] 132 hours/year × 6 ANC stand-alone SBSDs = 792 hours/year. These internal hours likely would be performed by a compliance manager.

sites.[1115] 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 Web site,[1116] 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 proposed Rule 18a–7 would impose an initial burden of ten hours per firm and an annual burden of one hour per firm. The Commission estimates that there are thirteen respondents (nine stand-alone SBSDs and four stand-alone MSBSPs), resulting in an industry-wide initial burden of 130 hours [1117] and an industry-wide ongoing burden of thirteen hours per year.[1118]

Annual Reports. Paragraph (c) of proposed Rule 18a–7 would require stand-alone SBSDs and stand-alone MSBSPs to file with the Commission an annual report consisting of certain financial reports.[1119] In addition, paragraph (d) of proposed Rule 18a–7 requires the filing firm to attach Part III of Form X–17A–5 to the annual report.[1120] Part III must include an oath or affirmation, which implicitly requires a senior officer or a trusted delegate to review the annual report. Based on the Commission staff's experience with the burden imposed by current Rule 17a–5's annual report requirement and related postage costs,[1121] the Commission estimates that paragraphs (c) and (d) of proposed Rule 18a–7 would impose on stand-alone MSBSPs an annual burden of ten hours and $5.60 per firm. The Commission estimates that there are four stand-alone MSBSPs, resulting in an industry-wide ongoing burden of forty hours [1122] and $22.40 per year.[1123]

Unlike stand-alone MSBSPs, stand-alone SBSDs would be required to include a compliance report with their annual reports.[1124] Thus, after consideration of the Commission's recent release adopting amendments to Rule 17a–5, which estimates that each compliance report takes approximately sixty hours to prepare,[1125] the Commission estimates that paragraphs (c) and (d) of proposed Rule 18a–7 would impose an annual burden of seventy hours and $5.60 per stand-alone SBSD. The Commission estimates that there are nine stand-alone SBSDs, resulting in an industry-wide ongoing burden of 630 hours [1126] and $50.40 per year. [1127]

Statement regarding Independent Public Accountant. Paragraph (e) of proposed Rule 18a–7 would require stand-alone SBSDs and stand-alone MSBSPs to file a statement regarding the independent public accountant engaged to audit the firm's annual reports.[1128] In addition to postage costs, the Commission's recent release estimates that the parallel requirement in Rule 17a–5 would 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 would require renegotiating the carrying broker-dealer's agreement with its independent public accountant.[1129] Consistent with that release, the Commission estimates that paragraph (e) of proposed Rule 18a–7 would impose an initial burden of ten hours per firm and an annual burden of two hours and 46 cents per firm.[1130] The Commission estimates that there are thirteen respondents (nine stand-alone SBSDs and four stand-alone MSBSPs), resulting in an industry-wide initial burden of 130 hours [1131] and an industry-wide ongoing burden of twenty-six hours [1132] and $5.98 per year.[1133]

Engagement of the Independent Public Accountant. Paragraph (f) of proposed Rule 18a–7 would require stand-alone SBSDs and stand-alone MSBSPs to engage an independent public accountant to provide reports covering the firm's annual reports.[1134] The Commission's recent release adopting amendments to Rule 17a–5 estimates that it would 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.[1135] Given that SBSDs and MSBSPs are expected to be larger and relatively sophisticated firms, the Commission assumes that they are carrying firms that would incur the $300,000 cost to audit their financial statements. However, since only stand-alone SBSDs are required to file a compliance report,[1136] only they (and not stand-alone MSBSPs) would be required to retain an independent public accountant to review their compliance reports.

Therefore, the Commission estimates that paragraph (f) of proposed Rule 18a–7 would impose an annual cost of $300,000 on each stand-alone MSBSP. The Commission estimates that there are four stand-alone MSBSPs, resulting in an industry-wide ongoing burden of $1,200,000 per year.[1137] The Commission estimates that paragraph (f) of proposed Rule 18a–7 would impose on stand-alone SBSDs an annual cost of $450,000 per firm,[1138] since both their financial statements and compliance report would need to be audited. The Commission estimates that there are nine stand-alone SBSDs, resulting in an industry-wide ongoing burden of $4,050,000 per year.[1139]

Notice of Change in Fiscal Year. Paragraph (j) of proposed Rule 18a–7 would require stand-alone SBSDs and stand-alone MSBSPs to notify the Commission of a change in fiscal

[1115] *See* paragraph (b) of proposed Rule 18a–7. The Commission does not anticipate a dollar cost to establish a Web site and a toll-free number under this paragraph, because the Commission believes firms that are large enough to register as an SBSD or MSBSP already maintain a toll-free number for their customers and already have an Internet Web site. *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).

[1116] *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 and paragraph (b) of proposed Rule 18a–7.

[1117] 10 hours × 13 stand-alone SBSDs and stand-alone MSBSPs = 130 hours. These internal hours likely would be performed by a compliance manager.

[1118] 1 hour/year × 13 stand-alone SBSDs and stand-alone MSBSPs = 13 hours/year. These internal hours likely would be performed by a compliance clerk.

[1119] *See* paragraph (c) of proposed Rule 18a–7.

[1120] *See* paragraph (d) of proposed Rule 18a–7.

[1121] As of May 2013, a priority mail flat rate envelope costs $5.60, based on costs obtained on the U.S. Postal Service Web site at *www.usps.gov.*

[1122] 10 hours/year × 4 stand-alone MSBSPs = 40 hours/year. These internal hours likely would be performed by a senior accountant.

[1123] $5.60/year × 4 stand-alone MSBSPs = $22.40/year.

[1124] *See* paragraph (c)(1)(i)(B) of proposed Rule 18a–7.

[1125] *See Broker-Dealer Reports,* 78 FR 51960.

[1126] 70 hours/year × 9 stand-alone SBSDs = 630 hours/year. These internal hours likely would be performed by a senior accountant.

[1127] $5.60/year × 9 stand-alone SBSDs = $50.40/year.

[1128] *See* paragraph (e) of proposed Rule 18a–7.

[1129] *See Broker-Dealer Reports,* 78 FR 51962.

[1130] It currently costs 46 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, *https://www.usps.com/ship/first-class.htm* (last visited Oct. 25, 2013).

[1131] 10 hours × 13 stand-alone SBSDs and stand-alone MSBSPs = 130 hours. These internal hours likely would be performed by a senior accountant.

[1132] 2 hours/year × 13 stand-alone SBSDs and stand-alone MSBSPs = 26 hours/year. These internal hours likely would be performed by a compliance clerk.

[1133] 46/year × 13 stand-alone SBSDs and stand-alone MSBSPs = $5.98/year.

[1134] *See* paragraph (f) of proposed Rule 18a–7.

[1135] *See Broker-Dealer Reports,* 78 FR 51963.

[1136] *See* paragraph (c)(1)(i)(B) of proposed Rule 18a–7.

[1137] $300,000/year × 4 stand-alone MSBSPs = $1,200,000/year.

[1138] $300,000/year (financial statements) + $150,000/year (compliance report) = $450,000/year.

[1139] $450,000/year × 9 stand-alone SBSDs = $4,050,000/year.

year.[1140] 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 one hour to prepare and file with the Commission,[1141] the Commission estimates that paragraph (j) of proposed Rule 18a–7 would impose a burden of one hour and 46 cents on a firm planning to change its fiscal year. The Commission estimates that each year, one firm will change its fiscal year, such that the estimated burden on the industry would be one hour and 46 cents per year.

Proposed Form SBS. Proposed Rule 18a–7 would require stand-alone SBSDs and stand-alone MSBSPs to file proposed Form SBS monthly,[1142] and would require bank SBSDs and bank MSBSPs to file proposed Form SBS quarterly.[1143] Stand-alone SBSDs and stand-alone MSBSPs would be required to complete more sections of proposed Form SBS than bank SBSDs and bank MSBSPs, and would therefore experience a greater burden.

Stand-alone SBSDs would be required to file proposed Form SBS on a monthly basis.[1144] Proposed Form SBS includes eleven sections and five schedules applicable to stand-alone SBSDs.[1145] Stand-alone SBSDs dually registered as FCMs would be required to complete five additional sections, all of which the CFTC already requires or has proposed to require FCMs to file as part of Form 1–FR–FCM.[1146] In consideration of these additional requirements, the Commission estimates that the requirement for stand-alone SBSDs to file proposed Form SBS every month would 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 nine stand-alone SBSDs, resulting in an industry-wide initial burden of 1,440 hours [1147] and an industry-wide ongoing burden of 1,728 hours per year.[1148]

Stand-alone MSBSPs would be required to file proposed Form SBS on a monthly basis.[1149] Proposed Form SBS includes three sections and five schedules applicable to stand-alone MSBSPs.[1150] Stand-alone MSBSPs dually registered as FCMs would be required to complete five additional sections, all of which the CFTC already requires or has proposed to require FCMs to file as part of Form 1–FR–FCM.[1151] In consideration of these additional requirements, the Commission estimates that the requirement for stand-alone MSBSPs to file proposed Form SBS every month would impose an initial burden of forty hours per firm and an ongoing annual burden of sixty hours per firm. The Commission estimates that there are four stand-alone MSBSPs, resulting in an industry-wide initial burden of 160 hours [1152] and an industry-wide ongoing burden of 192 hours per year.[1153]

Bank SBSDs would be required to file proposed Form SBS on a quarterly basis.[1154] Proposed Form SBS includes five sections and one schedule applicable to bank SBSDs.[1155] The Commission does not expect proposed Form SBS to impose a significant burden on bank SBSDs, because two of the five sections require the firm to file calculations already computed in accordance with proposed 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 would need to transpose this information from FFIEC Form 031 to Form SBS). Although bank SBSDs dually registered as FCMs would be required to complete 5 additional sections, the CFTC already requires or has proposed to require FCMs to file these schedules on Form 1–FR–

[1140] *See* paragraph (j) of proposed Rule 18a–7.

[1141] *See* Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11* (June 29, 2012), *available at http://www.reginfo.gov/public/do/DownloadDocument?documentID=332313&version=1.*

[1142] *See* paragraph (a)(1) of proposed Rule 18a–7.

[1143] *See* paragraph (a)(2) of proposed Rule 18a–7.

[1144] *See* paragraph (a)(1) of proposed Rule 18a–7.

[1145] Stand-alone SBSDs would 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 the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Appendix A; (11) Information for Possession or Control Requirements under Rule 18a–4; (12) Schedule 1—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.

[1146] Stand-alone SBSDs also registered as FCMs would 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)(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 proposed Form SBS.

[1147] 160 hours × 9 stand-alone SBSDs = 1,440 hours. These internal hours likely would be performed by a senior compliance manager.

[1148] 192 hours/year × 9 stand-alone SBSDs = 1,728 hours/year. These internal hours likely would be performed by a senior compliance manager.

[1149] *See* paragraph (a)(1) of proposed Rule 18a–7.

[1150] Stand-alone MSBSPs would 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.

[1151] Stand-alone MSBSPs also registered as FCMs would 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)(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 proposed Form SBS.

[1152] 40 hours × 4 stand-alone MSBSPs = 160 hours. These internal hours likely would be performed by a senior compliance manager.

[1153] 48 hours/year × 4 stand-alone MSBSPs = 192 hours/year. These internal hours likely would be performed by a senior compliance manager.

[1154] *See* paragraph (a)(2) of proposed Rule 18a–7.

[1155] Bank SBSDs would 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 the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Appendix A; (5) Information for Possession or Control Requirements under Rule 18a–4; and (6) Schedule 1 –Derivative Positions.

FCM.[1156] In consideration of these additional requirements, the Commission estimates that the requirement for bank SBSDs to file proposed Form SBS quarterly would impose an initial burden of 36 hours per firm and an ongoing annual burden of sixteen hours per firm. The Commission estimates that there are twenty-five bank SBSDs, resulting in an industry-wide initial burden of 900 hours[1157] and an industry-wide ongoing burden of 400 hours per year.[1158]

Bank MSBSPs would be required to file proposed Form SBS on a quarterly basis.[1159] Proposed Form SBS includes three sections and one schedule applicable to bank MSBSPs.[1160] Bank MSBSPs dually registered as FCMs would be required to complete five additional sections, all of which the CFTC already requires or has proposed to require FCMs to file as part of Form 1–FR–FCM.[1161] 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.[1162]

4. Proposed Amendments to Rule 17a–11 and Proposed Rule 18a–8

The proposed amendments to Rule 17a–11 and proposed Rule 18a–8 would impose collection of information requirements that result in annual time burdens for broker-dealers, SBSDs, and MSBSPs. Current Rule 17a–11 imposes an estimated annual burden of 1 hour per firm and a total industry burden of 443 hours.[1163] The Commission estimates that the proposed amendments to Rule 17a–11 would impose the following initial and annual burdens:

Burden	Annual burden
New notice of insufficient liquidity reserve [1164].	*Per notice:* 1 hour *Industry:* 1 hour.
New notice of failure to deposit in Rule 18a–4 account [1165].	*Per notice:* 1 hour *Industry:* 100 hours.
New notices filed by exchanges and national securities associations [1166].	*Per notice:* 1 hour *Industry:* 10 hours.
Total—Proposed amendments to Rule 17a–11.	*Industry:* 111 hours.

The Commission estimates that proposed Rule 18a–8 would impose an annual burden of 4.6 hours per year.

Estimated Ongoing Hours and Costs of Current Rule 17a–11

In the Supporting Statement accompanying the most recent extension of Rule 17a–11's collection, the Commission estimates that it takes one hour to prepare and file a notice required under Rule 17a–11.[1167] Given that 443 Rule 17a–11 notices were filed in 2012, current Rule 17a–11 creates an estimated industry-wide ongoing burden of 443 hours per year.[1168]

Estimated Hours and Costs of Proposed Amendments to Rule 17a–11

The Commission proposes to add paragraph (b)(6) to Rule 17a–11, which would require broker-dealer MSBSPs to notify the Commission if their tangible net worth falls below $20 million.[1169] Because the burden of actually calculating the firm's tangible net worth is already accounted for in the PRA estimate for proposed Rule 18a-2,[1170] the burden imposed by paragraph (b)(6) of Rule 17a–11, as proposed to be amended, is the requirement to notify the Commission when the firm's tangible net worth falls to a certain level. However, the Commission does not expect to receive any notices under this provision, since the Commission expects only one broker-dealer MSBSP, which would already be subject to the more stringent net capital requirements applicable to broker-dealers. Thus, the Commission does not expect paragraph (b)(6) of Rule 17a–11, as proposed to be amended, to impose an additional burden.

The Commission proposes to add paragraph (e) to Rule 17a–11, which would require ANC broker-dealers to notify the Commission if the monthly liquidity stress test indicates that the firm's liquidity reserve is insufficient.[1171] Because the burden of actually performing the liquidity stress test is already accounted for in the PRA estimate for Rule 15c3–1,[1172] the burden imposed by paragraph (e) of Rule 17a–11, as proposed to be amended, is the requirement to notify the Commission of certain adverse test results. Given the similarity in the rules, the Commission estimates that each required notice would take one hour to prepare and

[1156] Bank SBSDs also registered as FCMs would 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)(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 proposed Form SBS.

[1157] 36 hours × 25 bank SBSDs = 900 hours. These internal hours likely would be performed by a senior compliance manager.

[1158] 16 hours/year × 25 bank SBSDs = 400 hours/year. These internal hours likely would be performed by a senior compliance manager.

[1159] *See* paragraph (a)(2) of proposed Rule 18a–7.

[1160] Bank MSBSPs would 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 –Derivative Positions.

[1161] Bank MSBSPs also registered as FCMs would 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)(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 proposed Form SBS.

[1162] The Commission estimates that the requirement for bank MSBSPs to file proposed Form SBS quarterly would impose an initial burden of 16 hours per firm and an ongoing annual burden of 8 hours per firm.

[1163] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11.*

[1164] *See* paragraph (e) of Rule 17a–11, as proposed to be amended.

[1165] *See* paragraph (f) of Rule 17a–11, as proposed to be amended.

[1166] *See* paragraph (g) of Rule 17a–11, as proposed to be amended.

[1167] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11.*

[1168] 1 hour/notice × 443 notices/year = 443 hours/year. These internal hours likely would be performed by a compliance manager.

[1169] *See* paragraph (b)(6) of Rule 17a–11, as proposed to be amended.

[1170] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70290.

[1171] *See* paragraph (e) of Rule 17a–11, as proposed to be amended.

[1172] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70294.

file.[1173] The Commission does not expect to receive many notices under paragraph (e) of Rule 17a–11, given that it did not receive any Rule 17a–11 notices from ANC broker-dealers in 2012. However, since the Commission estimates that 4 additional firms will register as ANC broker-dealers, the Commission estimates that one notice per year would be filed under paragraph (e) of Rule 17a–11, resulting in an industry-wide ongoing burden of one hour per year.[1174]

The Commission proposes to add paragraph (f) to Rule 17a–11, which requires broker-dealer SBSDs to notify the Commission if they fail to make a deposit required under proposed Rule 18a–4.[1175] Because the burden to calculate the reserve amount is already accounted for in the PRA estimate for proposed Rule 18a–4,[1176] the burden imposed by paragraph (f) of Rule 17a–11, as proposed to be amended, is the requirement to notify the Commission when the firm fails to act in accordance with proposed Rule 18a–4. Given the similarity in the rules, the Commission estimates that each required notice would take one hour to prepare and file.[1177] Based on Commission experience with the number of notices filed under current Rule 17a–11,[1178] the Commission estimates that 100 notices would be filed each year under paragraph (f) of Rule 17a–11, as proposed to be amended, resulting in an industry-wide ongoing burden of 100 hours per year.[1179]

The Commission proposes to redesignate paragraph (f) of Rule 17a–11 as paragraph (g) and to require a broker-dealer's national securities exchange (''NSE'') or national securities association (''NSA'') 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).[1180] Thus, NSEs and NSAs would be subject to new burdens to file a delinquent broker-dealer's notices under new paragraphs (e) (liquidity stress test) and (f) (failure to deposit in Rule 18a–4 account). After considering the similar Rule 17a–11 requirement, the Commission estimates that each required notice would take one hour to prepare and file.[1181] Based on Commission experience with the number of notices currently filed by NSEs and NSAs, the Commission estimates that ten notices would be filed pursuant to the amendment to paragraph (g) of Rule 17a–11, as proposed to be amended, resulting in an estimated industry-wide ongoing burden of 10 hours per year.[1182]

Estimated Hours and Costs of Proposed Rule 18a–8

Proposed Rule 18a–8 would require non-broker-dealer SBSDs and non-broker-dealer MSBSPs to notify the Commission of certain indicia of their financial condition.[1183] The Commission estimates that each Rule 18a–8 notice would take approximately fifty-five minutes to prepare and file, in contrast to its estimate that a Rule 17a–11 notice would take one hour to prepare and file,[1184] because stand-alone SBSDs and stand-alone MSBSPs do not have a DEA with which to file a copy of the Rule 17a–11 notice and bank SBSDs and bank MSBSPs are not required to file the Rule 17a–11 notice with their prudential regulator.[1185]

The Commission estimates that it would 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 4,327 possible respondents—4,545 registered broker-dealers, minus 218 broker-dealers registered pursuant to section 15(b)(11)(A) of the Exchange Act.[1186] In contrast, the Commission estimates that there would be thirty-eight non-broker-dealer SBSDs and non-broker-dealer MSBSPs (twenty-five bank SBSDs, nine stand-alone SBSDs, and four stand-alone MSBSPs). Assuming that each of the five Rule 18a–8 notices takes fifty-five minutes to prepare and file, the Commission estimates proposed Rule 18a–8 would result in an industry-wide ongoing burden of 4.6 hours per year.[1187]

5. Proposed Rule 18a–9

Proposed Rule 18a–9, which is modeled on Rule 17a–13, would require stand-alone SBSDs to establish a securities count program.[1188] As explained below, the Commission estimates that proposed Rule 18a–9 would 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.[1189] The Commission is using this estimate, and therefore estimates that proposed Rule 18a–9 would impose an ongoing annual burden of 100 hours per stand-alone SBSD. The Commission estimates that there are nine stand-alone SBSDs, resulting in an estimated industry-wide ongoing burden of 900 hours per year.[1190]

The Commission also estimates that proposed Rule 18a–9 would impose an initial burden of twenty-five hours per firm. The records required by proposed Rule 18a–9 should already be recorded by the systems implemented under proposed Rules 18a–5 and 18a–6, and accordingly, the resulting initial burden is largely already accounted for under these rules.[1191] However, the Commission estimates that the initial cost to establish procedures for conducting the securities count

[1173] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11.*

[1174] 1 notice/year × 1 hour/notice = 1 hour/year. This internal hour likely would be performed by a compliance manager.

[1175] *See* paragraph (f) of Rule 17a–11, as proposed to be amended.

[1176] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297–70299.

[1177] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11.*

[1178] *See id.* (noting that in 2011, the Commission received approximately 465 notices under Rule 17a–11).

[1179] 100 notices/year × 1 hour/notice = 100 hours/year. These internal hours likely would be performed by a compliance manager.

[1180] *See* paragraph (g) of Rule 17a–11, as proposed to be amended.

[1181] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11.*

[1182] 10 notices/year × 1 hour/notice = 10 hours/year. These internal hours likely would be performed by a compliance manager.

[1183] *See* proposed Rule 18a–8.

[1184] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11.*

[1185] *Compare* paragraph (h) of Rule 17a–11, as proposed to be amended, *with* paragraph (h) proposed Rule 18a–8.

[1186] Rule 17a–11 does not apply to a broker-dealer registered pursuant to section 15(b)(11)(A) of the Exchange Act (15 U.S.C. 78o(b)(11)(A)) that is not a member of either a national securities exchange or a national securities association. *See* paragraph (j) of Rule 17a–11, as proposed to be amended. The Commission estimates that there are approximately 4,327 broker-dealers subject to Rule 17a–11 after consulting with the National Futures Association (4,545 registered broker-dealers—218 broker-dealers registered pursuant to section 15(b)(11)(A) of the Exchange Act = 4,327 Rule 17a–11 respondents).

[1187] 5 notices/year × (55 minutes/notice/60 minutes/hour) = 4.6 hours/year. These internal hours likely would be performed by a compliance manager.

[1188] *See* proposed Rule 18a–9.

[1189] *See* Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–13* (May 3, 2011), *available at http://www.reginfo.gov/public/do/DownloadDocument?documentID=245864&version=1.*

[1190] 100 hours/year × 9 stand-alone SBSDs = 900 hours/year. These internal hours likely would be performed by an operations specialist.

[1191] However, the Commission assumes that stand-alone SBSDs and stand-alone MSBSPs do not currently have a securities count program in place.

program, including identifying the persons involved in the program, would create an initial burden of approximately twenty-five hours per stand-alone SBSD, or 225 hours for the estimated nine stand-alone SBSDs.[1192]

E. Collection of Information Is Mandatory

The collections of information pursuant to the proposed amendments and new rules are mandatory, as applicable, for broker-dealers, SBSDs, and MSBSPs.

F. Confidentiality

The broker-dealer 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.[1193] Subject to certain exceptions,[1194] if there are material weaknesses, the accountant's report on the compliance report must be made available for customers' inspection and, consequently, it would not be deemed confidential.[1195] Subject to certain exceptions,[1196] a broker-dealer must furnish to its customers its unaudited financial statements,[1197] 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.[1198]

The stand-alone SBSD and stand-alone 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.[1199] Stand-alone SBSDs and stand-alone MSBSPs must also make publicly available on their Web sites 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.[1200] A stand-alone SBSD would also be required to disclose on its Web site 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;[1201] 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.[1202]

With respect to the other information collected under the proposed amendments and proposed rules, the firm can request the confidential treatment of the information.[1203] If such a confidential treatment request is made, the Commission anticipates that it will keep the information confidential subject to applicable law.[1204]

G. Retention Period for Recordkeeping Requirements

Rule 17a–4, as proposed to be amended, specifies the required retention periods for a broker-dealer.[1205] Proposed Rule 18a–6 specifies the required retention periods for non-broker-dealer SBSDs and non-broker-dealer MSBSPs.[1206] Many of the required records must be retained for three years; certain other records must be retained for longer periods.[1207]

H. Request for Comment

Pursuant to 44 U.S.C. 3306(c)(2)(B), the Commission requests comment on the proposed collections of information in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;
- Evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. The Commission does not expect any banks to register with the Commission as MSBSPs. Is this expectation correct? If not, please provide a suggested estimate and empirical support for it.

2. The Commission estimates that 26 FCMs will register with the Commission as SBSDs or MSBSPs—16 broker-dealer SBSDs, 9 stand-alone SBSDs, and 1 broker-dealer MSBSP. Is this estimate accurate? If so, provide empirical support for the Commission's estimate. If not, please provide a suggested estimate and empirical support for it.

3. The Commission believes that broker-dealers do not rely on paragraph (b)(2) of Rule 17a–3, which exempts from Rule 17a–3 transactions cleared by a bank if the bank keeps the requisite records for the broker-dealer.[1208] Is this correct? If not, please provide the estimated burden associated with the Commission's proposal to eliminate paragraph (b)(2) of Rule 17a–3.

4. Do stand-alone SBSDs and stand-alone MSBSPs already have record making, record preservation, and reporting systems in place? If so, please identify them so they can be taken into account in the Commission's burden estimates under proposed Rules 18a–5 through 18a–9.

5. The Commission believes there is no burden associated with its proposed amendment to paragraph (b)(1) of Rule 17a–4, which would add a cross-reference to paragraph (a)(11) of Rule 17a–3, as proposed to be amended (regarding proof of money balances). Is this estimate reasonable? Explain why or why not.

Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and

[1192] 25 hours × 9 stand-alone SBSDs = 225 hours. These internal hours likely would be performed by a senior operations manager.

[1193] *See* paragraph (e)(3) of Rule 17a–5, as proposed to be amended.

[1194] *See* paragraph (c)(1)(i) through (iii) of Rule 17a–5, as proposed to be amended.

[1195] *See* paragraph (c)(2)(iv) of Rule 17a–5, as proposed to be amended.

[1196] *See* paragraph (c)(1)(i)-(iii) of Rule 17a–5, as proposed to be amended.

[1197] *See* paragraph (c)(3) of Rule 17a–5, as proposed to be amended.

[1198] *See* paragraph (c)(2)(i) of Rule 17a–5, as proposed to be amended.

[1199] *See* paragraph (d)(2) of proposed Rule 18a–7.

[1200] *See* paragraph (b) of proposed Rule 18a–7.

[1201] *See* paragraph (b)(1)(ii) of proposed Rule 18a–7.

[1202] *See* paragraphs (b)(1)(iii) of proposed Rule 18a–7.

[1203] *See* 17 CFR 200.83. Information regarding requests for confidential treatment of information submitted to the Commission is available on the Commission's Web site at *http://www.sec.gov/foia/howfo2.htm#privacy.*

[1204] *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).

[1205] *See* Rule 17a–4, as proposed to be amended.

[1206] *See* proposed Rule 18a–6.

[1207] *See* Rule 17a–4, as proposed to be amended; proposed Rule 18a–6.

[1208] *See* 17 CFR 240.17a–3(b)(2).

should also send a copy of their comments to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, and refer to File No. S7–05–14. OMB is required to make a decision concerning the collections of information between thirty and sixty days after publication of this document in the **Federal Register**; therefore, comments to OMB are best assured of having full effect if OMB receives them within thirty days of this publication. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–05–14, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549.

V. Economic Analysis

A. Introduction

The Commission is sensitive to the costs and benefits of its rules. Some of these costs and benefits stem from statutory mandates, while others are affected by the discretion exercised in implementing the mandates. The following economic analysis seeks to identify and consider the benefits and costs—including the effects on efficiency, competition, and capital formation—that would result from the proposed new recordkeeping, reporting, notification, and securities count rules for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs and from the proposed amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11. The costs and benefits considered in proposing these new rules and 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 proposing to amend Rules 17a–3, 17a–4, 17a–5, and 17a–11 to establish recordkeeping, reporting, and notification requirements for broker-dealer SBSDs and broker-dealer MSBSPs to account for their security-based swap activities.[1209] Pursuant to section 15F(f) of the Exchange Act, the Commission is proposing 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. Finally, pursuant to sections 15F(f) and 17(a) of the Exchange Act, the Commission is proposing new Form SBS that would be used by all types of SBSDs and MSBSPs to report financial information and, in the case of broker-dealer SBSDs and broker-dealer MSBSPs, replace their use of Part II, Part IIA, Part IIB, or Part II CSE of the FOCUS Report. The Commission believes these proposed rules and rule amendments will help regulators determine whether relevant market participants comply with the proposed capital, margin, and segregation requirements.[1210] Additionally, the Commission is proposing technical amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11, which will apply to all registered broker-dealers.

With regard to the proposed rules and rule amendments relating to security-based swap recordkeeping and reporting, the baseline for the economic analysis is the OTC derivatives markets as they exist today. The baseline includes any recordkeeping and reporting rules currently applicable to participants in the OTC derivatives market including applicable rules previously adopted by the Commission [1211] but excluding the rules proposed here. The current OTC derivatives market participants and the current reporting and recordkeeping regimes for those entities are discussed more fully below. With respect to the proposed technical amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11, the baseline for purposes of this economic analysis is the current recordkeeping and reporting regime for broker-dealers under such rules.[1212]

While the Commission does not have comprehensive information on the U.S. OTC derivatives markets, the Commission is using the limited data currently available in considering the effects of the proposals.[1213] The Commission requests that commenters identify sources of data and information as well as provide data and information to assist the Commission in analyzing the economic consequences of the proposed rules. The Commission also requests comment on all aspects of this initial economic analysis, including on whether the analysis has: (1) identified all benefits and costs, including all effects on efficiency, competition, and capital formation; (2) given due consideration to each benefit and cost, including each effect on efficiency, competition, and capital formation; and (3) identified and considered reasonable alternatives to the proposed new rules and rule amendments.

The sections below present an overview of the OTC derivatives markets, a discussion of the general costs and benefits of the proposed recordkeeping and reporting requirements, and a discussion of the costs and benefits of each proposed amendment and new rule. The Economic Analysis also includes a discussion of the potential effects of the proposed amendments and new rules on competition, efficiency, and capital formation. The final section of the Economic Analysis consists of a discussion of implementation considerations.

B. Baseline of Economic Analysis

1. OTC Derivatives Market

As stated above, to assess the costs and benefits of these rules, a baseline must be established against which the rules may be evaluated. For the purposes of this economic analysis, the baseline is the OTC derivatives markets [1214] as they exist today, including applicable rules adopted by the Commission but excluding the rules

[1209] In addition, paragraph (a)(5) of Rule 17a–5, as proposed to be amended, and paragraph (e) of Rule 17a–11, as proposed to be amended, would require ANC broker-dealers to make additional reports related to the liquidity stress test conducted pursuant to paragraph (f) of Rule 15c3–1. The Commission is also proposing certain other amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11, as discussed above.

[1210] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213.

[1211] The Commission notes that it has temporarily excluded security-based swaps from the definition of ''security.'' *See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* 76 FR 39927; *Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* 78 FR 10218 (extending exemptive relief through February 11, 2014). Thus, for purposes of the Commission's baseline analysis for broker-dealers, security-based swap activities would be excluded.

[1212] *See* 17 CFR 240.17a–3; 17 CFR 240.17a–4; 17 CFR 240.17a–5; 17 CFR 240.17a–11.

[1213] Information that is available for the purposes of this economic analysis includes an analysis of the market for single-name credit default swaps performed by the Commission's Division of Economic and Risk Analysis (f/k/a the ''Division of Risk, Strategy, and Financial Innovation''). *See* Memorandum from Commission's Division of Risk, Strategy, and Financial Innovation to File (Mar. 15, 2012), *available at http://www.sec.gov/comments/s7–39–10/s73910–154.pdf* (''*CDS Data Analysis*'').

[1214] OTC derivatives may include forwards, swaps, and options on foreign exchange, and interest rate, equity, and commodity derivatives.

proposed here.[1215] The markets as they exist today are dominated, both globally and domestically, by a small number of firms, generally entities affiliated with or within large commercial banks.[1216]

The OTC derivatives markets have been described as opaque because, for example, transaction-level data about OTC derivatives trading generally is not publicly available.[1217] This economic analysis is supported, where possible, by data currently available to the Commission from the Depository Trust & Clearing Corporation Trade Information Warehouse (''DTCC–TIW''). This evaluation takes into account data regarding the security-based swap market and especially data regarding the activity—including activity that may be suggestive of dealing behavior—of participants in the single-name credit default swap market.[1218] While a large segment of the security-based swap market is comprised of credit default swaps, these derivatives do not comprise the entire security-based swap market.

Available information about the global OTC derivatives markets suggests that swap transactions, in contrast to security-based swap transactions, dominate trading activities, notional amounts, and market values.[1219] For example, the BIS estimates that the total notional amounts outstanding and gross market value of global OTC derivatives were over $693 trillion and $20.2 trillion, respectively, as of the end of June 2013.[1220] Of these totals, the BIS estimates that foreign exchange contracts, interest rate contracts, and commodity contracts comprised approximately 95% of the total notional amount and 93% of the gross market value.[1221] Credit default swaps, including index credit default swaps, comprised approximately 3.5% of the total notional amount and 3.6% of the gross market value. Equity-linked contracts, including forwards, swaps, and options, comprised approximately an additional 1.0% of the total notional amount and 3.5% of the gross market value.[1222]

Security-based swaps represent a relatively small subset of the overall global OTC derivatives market.[1223] Consistent with the Commission's authority over this subset of the OTC derivatives market,[1224] the recordkeeping, reporting, and notification requirements under proposed Rules 18a–5 through 18a–9 would apply only to those firms that participate in the security-based swap markets (although some of these firms may be dually-registered with the CFTC or the prudential regulators and thus may be subject to the recordkeeping and reporting rules of the CFTC and the prudential regulators governing swaps generally).[1225] In addition, although the proposed recordkeeping, reporting, and notification requirements apply to all security-based swaps, not just single-name credit default swaps, the data on single-name credit default swaps are currently sufficiently representative of the market to help inform this economic analysis because when measured by notional value, single-name credit default swaps account for 95% of all SBS transactions.[1226] The majority of these single-name credit default swaps, both in terms of aggregate total notional amount and total volume by product type reference corporate and sovereign entities.[1227]

While the number of transactions in single-name credit default swaps is larger than the number of index credit default swaps, the aggregate total notional amount of index credit default swaps exceeds the notional amount of single-name credit default swaps.[1228] For example, the total aggregate notional amount for single-name credit default swaps was $6.2 trillion, while the aggregate total notional amount for index credit default swaps was $16.8 trillion over the sample period of January 1, 2011 through December 31, 2011. For the same sample period, however, single-name credit default swaps totaled 69% of transactional volume, while index credit default swaps comprised 31% of the total transactional volume.[1229] The majority of trades in both notional amount and volume for both single-name and index credit default swaps over the 2011 sample period were new trades in contrast to assignments, increases, terminations or exits.[1230] The analysis of the 2011 data further shows that, as measured by total notional amount and total volume, the majority of single-name and index credit default contracts have a tenor of five years.[1231] In addition, the data from the sample period indicates that the geographical distribution of counterparties' parent country domiciles in single name

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[1215] The baseline, however, for the proposed amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11 is the current recordkeeping and reporting regime for broker-dealers under these rules.

[1216] *See, e.g.,* Bank for International Settlements (''BIS''), *Statistical Release: OTC derivatives statistics at end-June 2013* (November 2013), *available at http://www.bis.org/publ/otc_hy1311.pdf. See also ISDA Margin Survey 2012.*

[1217] *See* Orice M. Williams, Director, Financial Markets and Community Investment, General Accountability Office, Systemic Risk: Regulatory Oversight and Recent Initiatives to Address Risk Posed by Credit Default Swaps, GAO–09–397T, 2, 5, 27 (Mar. 2009), *available at http://www.gao.gov/new.items/d09397t.pdf. See also* Robert E. Litan, The Brookings Institution, *The Derivatives Dealers' Club and Derivatives Market Reform: A Guide for Policy Makers, Citizens and Other Interested Parties* 15–20 (Apr. 7, 2010), *available at http://www.brookings.edu/~/media/research/files/papers/2010/4/07%20derivatives%20litan/0407_derivatives_litan.pdf*; *Security-Based Swap Data Repository Registration, Duties, and Core Principles,* Exchange Act Release No. 63347 (Nov. 19, 2010), 75 FR 77306, 77354 (Dec. 10, 2010); International Organization of Securities Commissions, *The Credit Default Swap Market,* Report FR05/12 (June 2012), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD385.pdf* (stating although the amount of public information on credit default swaps has increased over recent years, the credit default swap market is still quite opaque).

[1218] *See CDS Data Analysis.*

[1219] *See* BIS *Statistical Release: OTC derivatives statistics at end-June 2013* (reflecting data reported by central banks in thirteen countries: Australia, Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom, and the U.S.).

[1220] *Id.* at 5.

[1221] *Id.*

[1222] *Id.* Similarly, the OCC has found that interest rate products comprised 81% of the total notional amount of OTC derivatives held by bank dealers whereas credit derivative contracts comprised 5%. *See* OCC, *Quarterly Report on Bank Trading and Derivatives Activities, Third Quarter 2013, available at http://www.occ.gov/topics/capital-markets/financial-markets/trading/derivatives/dq313.pdf.*

[1223] For example, as of the end of June, 2013, BIS reports that the global notional amount outstanding of OTC derivatives was $692,908 billion. Interest rate contracts, which generally are not security-based swaps, comprised approximately 83.31% of the overall OTC derivatives market. Foreign exchange contracts, another type of OTC derivative which generally is not a security-based swap, comprised another 11.69% of the overall derivatives market. *See* BIS *Statistical Release: OTC derivatives statistics at end-June 2013,* p. 5.

[1224] *See* 15 U.S.C. 78o–10(f)(1) and (2).

[1225] *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; 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).

[1226] *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30636. *See also Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* 77 FR 48208.

[1227] Data compiled by the Commission's Division of Economic and Risk Analysis on credit default transactions from the DTCC–TIW from January 1, 2011 through December 31, 2011. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital for Broker-Dealers,* 77 FR 70301.

[1228] *Id.* This data also shows the average mean and median single-name and index credit default swap notional transaction size is $6.47 million and $4.12 million, and $39.22 million and $14.25 million, respectively.

[1229] *Id.*

[1230] *Id.*

[1231] *Id.*

contracts are concentrated in the U.S., United Kingdom, and Switzerland.[1232]

As described more fully in the *CDS Data Analysis,*[1233] based on 2011 transaction data, Commission staff identified entities currently transacting in the credit default swap market that may register as SBSDs by analyzing various criteria of their dealing activity. The results suggest that there is currently a high degree of concentration of potential dealing activity in the single-name credit default swap market. For example, using the criterion that dealers are likely to transact with many counterparties who themselves are not dealers, the analysis of the 2011 data shows that only 28 out of 1,084 market participants have three or more counterparties that themselves are not recognized as dealers by ISDA.[1234] In addition, the analysis suggests that dealers appear, based on the percentage of trades between buyer and seller principals, in the majority of all trades on either one or both sides in single-name and index credit default swaps.[1235] Additionally, according to the OCC, at the end of the first quarter of 2012, 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 93% of the total banking industry notional amounts and 81% of industry net current credit exposure.[1236]

This concentration to a large extent appears to reflect the fact that those larger entities are well-capitalized and therefore possess competitive advantages in engaging in OTC security-based swap dealing activities by providing potential counterparties with adequate assurances of financial performance.[1237] Also, the high barriers to entry indicate that only a limited number of entities conduct business in this space.

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. First, because the Exchange Act has not previously defined security-based swaps as ''securities,'' they have not been required to be traded through registered broker-dealers.[1238] And second, a broker-dealer engaging in security-based swap activities is currently subject to existing regulatory requirements, including capital, margin, segregation, recordkeeping, reporting, notification, and securities count requirements. Specifically, the existing broker-dealer capital requirements make it relatively costly to conduct these activities in broker-dealers.[1239] Instead of occurring at broker-dealers, security-based swap activities are currently mostly concentrated in entities that are affiliated with broker-dealers, but not in broker-dealers themselves.[1240]

End users enter into OTC derivatives transactions to take investment positions or to hedge commercial and financial risk. These non-dealer end users of OTC derivatives are, for example, commercial companies, governmental entities, financial institutions, and investment vehicles.[1241] Available data suggests that the largest end users of credit default swaps are, in descending order, hedge funds, asset managers, and banks, which may have a commercial need to hedge their credit exposures against a wide variety of entities or may take an active view on credit risk.[1242] Based on the available data, the Commission further estimates that these end users currently participate in the security-based swap markets on a very limited basis.[1243] Finally, this baseline will be further discussed in the applicable sections of the release below.

Request for Comment

The Commission generally requests comment about its preliminary estimates of the scale and composition of the OTC derivatives market, including the relative size of the security-based swap segment of that market. The Commission also requests comment on the Commission's understanding of which entities are engaged in the OTC derivatives market, as well as the business practices of broker-dealer, bank, and stand-alone SBSDs and MSBSPs currently engaged in the OTC derivatives markets. In addition, the Commission requests that commenters provide data and sources of data to quantify:

1. The average daily and annual volume of OTC derivatives transactions;
2. The volume of transactions in each class of OTC derivatives (*e.g.,* interest rate swaps, index credit default swaps, single-name credit default swaps, currency swaps, commodity swaps, and equity-based swaps);
3. The total notional amount of all pending swap transactions;
4. The total gross exposure of all pending swap transactions;
5. The total notional amount of all pending security-based swap transactions;
6. The total gross exposure of all pending security-based swap transactions;
7. The types and numbers of dealers in OTC derivatives (*e.g.,* banks, broker-dealers, unregulated entities);
8. The types and numbers of dealers in OTC derivatives that engage in both a swap and security-based swap business;
9. The types and numbers of dealers in OTC derivatives that engage only in a swap business;
10. The types and numbers of dealers in OTC derivatives that engage only in a security-based swap business;
11. The current recordkeeping practices with respect to security-based swap and swap transactions;
12. The current reporting practices with respect to swap transactions;
13. The current securities count practices with respect to OTC derivatives participants; and
14. The current financial reporting practices of OTC derivatives participants.

[1232] *Id.*

[1233] *See CDS Data Analysis.*

[1234] *Id.* at Table 3c. The analysis of this transaction data is imperfect as a tool for identifying dealing activity, given that the presence or absence of dealing activity ultimately turns upon the relevant facts and circumstances of an entity's security-based swap transactions, as informed by the dealer-trader distinction. Criteria based on the number of an entity's counterparties that are not recognized as dealers nonetheless appear to be useful for identifying apparent dealing activity in the absence of full analysis of the relevant facts and circumstances, given that engaging in security-based swap transactions with non-dealers would be consistent with the conduct of seeking to profit by providing liquidity to others, as anticipated by the dealer-trader distinction. *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30599 (discussing the dealer-trader distinction).

[1235] *See CDS Data Analysis.*

[1236] *See* OCC, *Quarterly Report on Bank Trading and Derivatives Activities, Third Quarter 2013,* p.1.

[1237] *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 Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30739–30742.

[1238] *See* 15 U.S.C. 78c(a)(10) and (a)(68) (defining ''security'' and ''security-based swap'', respectively).

[1239] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70217–70257.

[1240] *See ISDA Margin Survey 2012.*

[1241] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital for Broker-Dealers,* 77 FR 70302.

[1242] *See CDS Data Analysis.*

[1243] *Id.*

2. OTC Derivatives Market Participants and Broker-Dealers

The Commission has not promulgated final registration rules for SBSDs and MSBSPs. Therefore, there are no entities currently registered as SBSDs or MSBSPs. As discussed above, the Commission anticipates that certain entities (stand-alone firms, banks, and registered broker-dealers) may register as SBSDs or MSBSPs, but the number and type of these registrants is uncertain. Below, the Commission has summarized the current recordkeeping practices of these entities, although as noted below, the Commission does not have information regarding the practices of some of these entities. The Commission also has provided below an overview of the entities registered with the Commission as broker-dealers.

a. Stand-Alone SBSDs and Stand-Alone MSBSPs

Currently, there are firms that are neither banks nor broker-dealers that participate in the market for security-based swaps. For these firms, the economic baseline would be the reports and records these firms currently generate in the ordinary course of their business. The Commission believes that firms engaged in the security-based swap market would produce financial reports that are included in the financial reports it is proposing, such as a balance sheet and an income statement quarterly and at year end, as a part of ordinary prudent business practices. Such firms may not, however, produce annual audited financial statements. The Commission also believes that firms engaged in the security-based swap business would need, as a matter of prudent business practice, to maintain records documenting the firm's derivatives positions. Further, the Commission would expect that these firms would maintain these records for the duration they held a given position and for some period of time thereafter. However, the Commission does not believe that these firms would necessarily have any regulatory reporting activities. In sum, the baseline for nonbank and non-broker-dealer firms would be the recordkeeping, record retention, and financial reporting activities (if any) those firms currently undertake. 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 would presently incur in the ordinary course of business. Moreover, while the Commission has estimated the current costs of recordkeeping and reporting for broker-dealer and banks below, the Commission does not believe these nonbank and non-broker-dealer firms are currently subject to analogous recordkeeping and reporting requirements. As noted above, the Commission believes that these firms would, however, as a matter of routine business practice maintain some records documenting their business activities. Any new costs imposed by the proposed rules would be incremental to costs currently being incurred by these entities. In order to help the Commission assess the costs associated with the proposed recordkeeping and reporting requirements, and the extent to which the proposed recordkeeping and reporting rules add costs above those already incurred by these firms in the ordinary course of business, the Commission requests comment. Specific cost estimates would be particularly helpful to the Commission's analysis.

b. Bank Security-Based Swap Dealers and Bank Major Security-Based Swap Participants

Banks are already subject to recordkeeping and retention requirements by the prudential regulators.[1244] In addition, banks must file financial statements and supporting schedules known as ''call reports'' with their prudential regulator.[1245] The Commission believes that the most common form of call report for a bank that would register as an SBSD or MSBSP is FFIEC Form 031.[1246] 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 detail about its assets, liabilities, and equity capital on Schedule RC to FFIEC Form 031.[1247] A bank must report detail about its regulatory capital on Schedule RC–R to FFIEC Form 031.[1248] The information elicited on Schedule RC–R is designed to facilitate an analysis of the bank's regulatory capital. A bank must report detail about its income (loss) and expenses on Schedule RI to FFIEC Form 031.[1249]

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 the universe of existing PRA collections to which national banks are subject and selecting those collections which represent regulations that are analogous to the recordkeeping, record retention, reporting, and notification rules the Commission is proposing herein.[1250] The Commission then estimated that reporting burdens generate approximately $79/hour of cost for national banks and that recordkeeping burdens generate approximately $30/hour of cost for national banks.[1251] The Commission estimates that national banks currently incur $54,120,368 of costs to comply with the OCC's financial reporting, notification and recordkeeping rules.[1252] 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 that may be imposed by the Commission's proposed rules. Nonetheless, these cost estimates may help provide context and cost ranges with respect to the nationally chartered banks impacted by the Commission's proposed rules.

[1244] *See, e.g.,* 12 CFR 12.3 (Department of Treasury); 12 CFR 219.21 *et seq.* (FDIC); 12 CFR 344.4 (FDIC).

[1245] *See* 12 U.S.C. 324; 12 U.S.C. 1817; 12 U.S.C. 161; 12 U.S.C. 1464.

[1246] FFIEC Form 031 is filed by banks with domestic and foreign offices, which the Commission believes will characterize most bank SBSDs.

[1247] *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.

[1248] *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.

[1249] *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.

[1250] 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.*

[1251] 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.

[1252] 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 Office of Management and Budget. 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	32,785
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			55,614,969

c. Entities Registered as Broker-Dealers

As of April 1, 2013, there were 4,545 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.[1253] The Commission has previously estimated that as of December 31, 2011, nine broker-dealers dominate the broker-dealer industry, holding over half of all capital held by broker-dealers.[1254] However, 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.[1255]

i. Rules 17a–3 and 17a–4

The Commission is proposing amendments to Rules 17a–3 and 17a–4 to establish additional recordkeeping requirements for broker-dealer SBSDs, broker-dealer MSBSPs,[1256] and broker-dealers that conduct security-based swap activities but are not registered as SBSDs.[1257] The baseline for this economic analysis with respect to the proposed amendments to Rules 17a–3 and 17a–4 is the broker-dealer recordkeeping regime as it exists today.

Under current Rule 17a–3, broker-dealers must make and keep certain books and records.[1258] The Commission estimates that current Rule 17a–3 imposes $191,858,085 of annual costs on broker-dealers.[1259] Current Rule 17a–4 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 to be made 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 $95,454,090 of annual costs on broker-dealers.[1260]

ii. 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 proposed amendments to Rules 17a–5 is the broker-dealer financial reporting requirements as they exist today (as recently amended). The Commission estimates that current Rule 17a–5 imposes $210,776,086 of annual costs on broker-dealers.[1261]

Rule 17a–5, as recently amended, 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.[1262] 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 the 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. Specifically: (1) a broker-dealer that does not hold customer funds or securities completes and files the FOCUS Report Part IIA; (2) a broker-dealer that holds customer funds or securities completes and files the FOCUS Report Part II; (3) an OTC derivatives dealer completes and files the FOCUS Report Part IIB; and (4) an ANC broker-dealer completes and files the FOCUS Report Part II CSE. The FOCUS Report Part II CSE elicits the most detailed information of the four versions, including the most detail about a firm's derivatives activities.

b. Annual Audited Reports and Related Notifications

Under the recently adopted amendments to 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

[1253] *See Broker-Dealer Reports,* 78 FR 51967.

[1254] *See Broker-Dealer Reports,* 78 FR 51968.

[1255] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70302.

[1256] *See* section II.A.2. of this release.

[1257] The proposed amendments to the recordkeeping and reporting rules would apply to all broker-dealers that conduct security-based swap activities. The *de minimis* exception provided in Exchange Act Rule 3a71–2 applies solely to registration as an SBSD. *See* 17 CFR 240.3a71–2(a)(1) .

[1258] *See* 17 CFR 240.17a–3.

[1259] (2,449,755 hours × $63/hour national hourly rate for a compliance clerk) + $37,523,520 in external costs = $191,858,085. *See supra* section IV.D.1. (PRA estimate of the total initial and annual recordkeeping and reporting burden for current Rule 17a–3).

[1260] (1,154,430 hours × $63/hour national hourly rate for a compliance clerk) + $22,725,000 in external costs = $95,454,090. *See supra* section IV.D.2. (PRA estimate of the total initial and annual recordkeeping and reporting burden for current Rule 17a–4).

[1261] (734,294 hours × $269/hour national hourly rate for a compliance manager) + $13,251,000 in external costs = $210,776,086. *See supra* section IV.D.3. (PRA estimate of the total initial and annual recordkeeping and reporting burden for current Rule 17a–5).

[1262] *Id.* These requirements are described in more detail below.

accountant, disclose certain financial information to customers, notify the Commission of a change of accountant, and notify the Commission of its DEA's approval of a change in its fiscal year.[1263] The recent rule amendments also require 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.[1264]

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. 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 Web site home page and maintains a toll-free number that customers can call to request a copy of the statement.[1265]

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.[1266] The reports contain information related to the ANC broker-dealer's use of internal models to calculate market and credit risk charges when computing net capital.[1267]

iii. 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 proposed 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.[1268] The Commission estimates that current Rule 17a–11 imposes $119,167 of annual costs on broker-dealers in the aggregate.[1269]

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.[1270] Paragraph (b)(2) of Rule 17a–11 requires an OTC derivatives dealer or an ANC broker-dealer to also notify the Commission when its tentative net capital falls below the minimum required for these types of broker-dealers.[1271]

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 also notify the Commission when its tentative net capital falls below the minimum required for these types of broker-dealers.[1272] 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.[1273] These notices are designed to provide the Commission with ''early warning'' that the broker-dealer may experience financial difficulty.[1274] 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; [1275]
- 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 Appendix A of Rule 15c3–3;[1276]
- 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; [1277]
- With respect to an OTC derivatives dealer, the occurrence of the fourth and each subsequent backtesting exception under Appendix F of Rule 15c3–1 during any 250 business day measurement period.[1278]

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.[1279] The notice must specify the books and records which have not been made or which are not current.[1280] A broker-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.[1281]

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.[1282] 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.[1283]

[1263] *See* 17 CFR 240.17a–5(d), (g), and (n)(1). 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.1

[1264] *See Broker-Dealer Reports,* 78 FR 51910.

[1265] *See* 17 CFR 240.17a–5(c)(5).

[1266] *See* 17 CFR 240.17a–5(a)(6).

[1267] *Id.*

[1268] *See* 17 CFR 240.17a–11.

[1269] 443hours × $269/hour national hourly rate for a compliance manager = $119,167. *See supra* section IV.D.4. (PRA estimate of the total initial and annual recordkeeping and reporting burden for current Rule 17a–11).

[1270] *See* 17 CFR 240.17a–11(b).

[1271] *See* 17 CFR 240.17a–11(b)(2).

[1272] *Id.*

[1273] *See* 17 CFR 240.17a–11(c).

[1274] *See Early Warning Rule,* Securities Exchange Act Release No. 32586 (July 7, 1993), 58 FR 37655 (July 13, 1993).

[1275] *See* 17 CFR 240.17a–11(c)(1). As discussed above, 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* 17 CFR 240.15c3–1(a)(1)(i). 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.

[1276] *See* 17 CFR 240.17a–11(c)(2). As discussed above, 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* 17 CFR 240.15c3–1(a)(1)(ii). 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.

[1277] *See* 17 CFR 240.17a–11(c)(3).

[1278] *See* 17 CFR 240.17a–11(c)(4).

[1279] *See* 17 CFR 240.17a–11(d).

[1280] *Id.*

[1281] *Id.*

[1282] *See* 17 CFR 240.17a–11(e). *See also* 17 CFR 240.17a–5(g).

[1283] *See* 17 CFR 240.17a–11(e)(1) and (2). *See also Broker-Dealer Reports,* 78 FR 51939 (discussing

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.[1284]

C. Analysis of the Proposed Program and Alternatives

1. Overview—The Proposed Recordkeeping, Reporting, Notification, and Securities Count Program

Generally, the proposed recordkeeping, reporting, notification, and securities count requirements are intended to update the recordkeeping, reporting, notification, and securities count requirements for broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to account for their security-based swap activities. The proposal is also intended to establish recordkeeping, reporting, and notification requirements for SBSDs and MSBSPs that are not registered as broker-dealers as well as a securities count requirement for stand-alone SBSDs. The recordkeeping, reporting, notification, and securities count rules being proposed are based upon the comprehensive system of recordkeeping, reporting, notification, and securities count rules applicable to broker-dealers, as proposed to be modified to capture and document the security-based swap activities of broker-dealers, SBSDs, and MSBSPs. The recordkeeping, reporting, notification, and securities count rules and rule amendments being proposed today represent the manner in which SBSDs and MSBSPs will document, report, and retain evidence of their compliance with, among other things, the previously proposed 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 proposals.[1285]

In proposing these requirements, the Commission is considering both the potential benefits of improving the oversight, transparency, risk documentation and management of security-based swap activities, and the potential costs to firms, the financial markets, and the U.S. financial system if broker-dealers, SBSDs, and MSBSPs are required to comply with the proposed rules.

The Commission notes that there are certain instances when it is difficult to quantify the potential benefits and costs of the proposed rules. For example, firms that choose to register in some capacity as an SBSD or MSBSP may not currently be subject to Commission, CFTC, or prudential regulation. For these firms, the Commission is not certain of 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 proposed rules and rules amendments on these firms. With regard to other classes of regulated entities, 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 (such as those related to retaining attorneys, accountants, and other professionals) and in such cases the Commission has prepared below a summary of its preliminary estimate of those costs.[1286]

As discussed in section II. of the release, the current broker-dealer recordkeeping, reporting, notification, and securities count requirements serve as the template for the proposals for several reasons. The financial markets in which SBSDs and MSBSPs are expected to operate are similar to the financial markets in which broker-dealers operate in that they are driven in significant part by dealers that buy and sell on a regular basis and that take principal risk. The Commission believes it should take a similar regulatory approach for similar markets.

The Commission also believes that in order to prevent regulatory arbitrage, and to help ensure appropriate accountability and oversight, security-based swap activity should be regulated in a similar manner irrespective of whether it is conducted by, for example, a broker-dealer or stand-alone SBSD. The proposals applicable to stand-alone SBSDs and stand-alone MSBSPs seek to regulate these firms' security-based swap activity consistent with the regulation of security-based swap activities conducted at broker-dealers, while reflecting the business model of such entities.[1287] 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 business should also be subject to an appropriately circumscribed set of regulations.

Moreover, the rules ultimately adopted, 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 various, or multiple, jurisdictions. In particular, intermediaries operating in the U.S. and in other jurisdictions could be advantaged or disadvantaged if corresponding requirements are not established in other jurisdictions or if the Commission's rules are substantially more or less stringent than corresponding requirements in other jurisdictions. This could, among other potential impacts, affect the propensity 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. Accordingly, substantial differences between the U.S. and foreign jurisdictions in the costs of complying with the requirements established under the Dodd-Frank Act, including the reporting, recordkeeping, notification, and security count requirements for security-based swaps between U.S. and foreign jurisdictions, could have international implications.[1288]

The Commission also preliminarily believes that there are cost and compliance benefits to be realized by utilizing an existing, well-known set of rules as a starting point. The Commission notes that the broker-dealer recordkeeping, notification, securities count, and reporting requirements have existed for many years and have facilitated the accountability and oversight of broker-dealers. From the perspective of trying to minimize

amendment of material weakness standard in Rule 17a–5). As discussed above in section II.B.3.a. of this release, the Commission is proposing to use the concept of material weakness in proposed Rule 18a–7.

[1284] *See* 17 CFR 240.15c3–3(i).

[1285] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213.

[1286] *See infra* section V.E.

[1287] In this regard, the Commission notes the proposal excludes a number of recordkeeping requirements for bank SBSDs and bank 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 SBSD or MSBSP.

[1288] *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 31034.

regulatory costs and compliance concerns, the Commission would expect that broker-dealer SBSDs and broker-dealer MSBSPs would already be familiar with the structure and content of the recordkeeping and reporting requirements. The Commission believes that these compliance and cost benefits could be realized even by firms that are not currently registered as broker-dealers given that some of the new registrants would 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. Even for those firms that have no source of such in-house expertise, the Commission expects that starting with the existing broker-dealer rules should require less expenditure than if the Commission created entirely new rules given that outside expertise with the current broker-dealer rules is readily available. Notwithstanding this belief, the Commission acknowledges that its proposals would likely still require new expenditures for these firms. In order to aid its analysis, the Commission requests comment on the use of the existing broker-dealer rules as a model. The Commission also requests comment on whether there are other existing rule sets that would be more appropriate.

In determining appropriate recordkeeping, reporting, notification, and securities count requirements, the Commission assesses and considers a number of different costs and benefits, and the determinations it ultimately makes can have a variety of economic consequences for the relevant firms, markets, and the financial system as a whole. The recordkeeping, reporting, notification, and securities count requirements in particular are broadly intended to facilitate effective oversight and improve internal risk management via requiring robust internal procedures for creating and retaining records central to the conduct of business as an SBSD or MSBSP. Requiring registered firms to comply with recordkeeping and reporting rules should help ensure more effective regulatory oversight. The proposed rules would help the Commission determine whether an SBSD or MSBSP is operating in compliance with the Exchange Act and the rules thereunder.

The Commission also believes that the proposed rules could promote technology improvements. Those SBSDs and MSBSPs that do not have the technology to store and maintain the information required by the proposed rules will need to invest in technology. The technology improvements could help SBSDs and MSBSPs, particularly those that conducted the security-based swap business outside of any regulated entity, more effectively track their trading and risk exposure in security-based swaps. To the extent that these firms can better track their risk, this should help them better manage risk.

The Commission also believes that the required annual audit of nonbank SBSDs' and nonbank MSBSPs' financial statements and the public availability of firms' Statement of Financial Condition would permit customers and counterparties to have access to financial information that would permit them to better assess the financial condition of the firm. While it is difficult to quantify the current level of market confidence in the security-based swap marketplace, 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 proposal. Those costs include the costs of complying with the proposed rules, one-time and ongoing financial reporting costs, and costs associated with ongoing record maintenance.

2. Alternatives to the Proposed 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 rules it is proposing today, 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. In a number of instances, Commission staff also consulted with staff from its fellow regulators regarding the proposals herein.

The Commission believes the proposals herein are broadly consistent with the approach taken by the CFTC. The CFTC's proposed and ultimately final rules were modeled on an existing set of the rules.[1289] For existing broker-dealers and firms affiliated with existing broker-dealers, the Commission believes that starting with an existing and known set of rules offers practical benefits for both the regulator and the regulated entities, as compared with starting with a wholly new set of rules. The Commission acknowledges that the benefits of this approach would be much more limited for firms such as stand-alone entities that are not currently broker-dealers and are not affiliated with broker-dealers.

Although it is not possible to precisely compare rule sets across agencies, the Commission believes that the recordkeeping rules it is proposing are similar to those of the CFTC in terms of their level of prescriptiveness. For example, paragraph (a)(1) of Rule 17a–3 sets forth the requirement that a broker-dealer make and keep current a trade blotter. The Commission is also proposing very similar provisions in paragraphs (a)(1) and (b)(1) of proposed Rule 18a–5, designed to apply, respectively, to stand-alone SBSDs and stand-alone MSBSPs, as well as bank SBSDs and bank MSBSPs. Paragraph (a)(2) of the corresponding CFTC rule, Rule 202 (''Daily Trading Records''), prescribes that swap dealers and major swap participants shall make and keep trade execution records that are very similar.[1290]

In considering whether there were other practicable regulatory alternatives, the Commission also examined rules of the prudential regulators. For example, the OCC has rules governing recordkeeping and confirmation requirements for securities transactions effected by national banks.[1291] 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 proposed to be amended, as well as with paragraph (b)(7) of proposed Rule 18a–5.[1292]

The Commission considered regulatory approaches outside of those utilized by other regulators. One alternative would be for all SBSDs 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 segregation proposals that would apply

[1289] *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 20171 (stating swap dealer and major swap participant rules are modeled on existing rules as well as those of the Commission).

[1290] *See* 17 CFR 23.202(a)(2).

[1291] *See* 12 CFR 12.3.

[1292] *Compare* 12 CFR 12.3(a), *with* paragraph (a)(6) of Rule 17a–3, as proposed to be amended, and paragraph (b)(7) of proposed Rule 18a–5.

to each participant. For example, since a stand-alone MSBSP would not be subject to a minimum net capital requirement under the proposed capital rules that would be applicable to SBSDs and MSBSPs (it would be subject to a positive tangible net worth standard instead),[1293] it may be unduly burdensome to require stand-alone MSBSPs to calculate and report in Form SBS the amount of net capital it holds. Hence, while the Commission considered such a simpler approach, the Commission preliminarily believes that such an approach would be confusing and unduly burdensome for firms required to complete and file Form SBS and would introduce significant compliance challenges beyond those imposed by the proposed rules and rule amendments.

Another alternative to the rules the Commission is proposing 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 have the advantage of likely being less costly, as the firm would be more able to conform its existing recordkeeping practices at the parent and the subsidiaries. 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 preliminarily believes these similarities argue for a consistent regulatory approach.[1294] In addition, as discussed above, the objectives of these broker-dealer requirements are similar to the objectives underlying the proposals regarding securities-based swaps.[1295] Notwithstanding its preliminary analysis of the issue, the Commission requests comment on whether there are existing alternative rule sets that could provide such a model, and the appropriateness of those alternatives relative to what the Commission has proposed.

The Commission has also considered alternatives to the financial reporting rules being proposed. For example, with respect to bank SBSDs and bank MSBSPs, 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 Form SBS, but the proposal is designed to ameliorate those burdens. Thus, while proposed Form SBS seeks specific transaction and position data regarding bank SBSDs' and bank MSBSPs' security-based swap activities, the other required financial data in Form SBS for bank SBSDs and bank MSBSPs come directly from the filings these firms currently make with their respective prudential regulators.[1296] The Commission invites comment on whether there are other ways of obtaining information regarding bank SBSDs' and bank MSBSPs' security-based swaps transactions and positions that would be less costly or burdensome and that would also facilitate Commission oversight of the transactions, positions, and financial condition of these firms.

The Commission has also considered alternative financial reporting arrangements for stand-alone SBSDs or stand-alone MSBSPs. 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 90 days of the end of the fiscal year.[1297] The CFTC did not prescribe any additional forms such as what the Commission is proposing with Form SBS. The Commission preliminarily believes that that the information elicited by Form SBS should assist the Commission and the firms' DEAs to conduct effective examinations of broker-dealer SBSDs and broker-dealer MSBSPs. The broker-dealer SBSD and broker-dealer MSBSP reporting requirements would promote transparency of the financial and operational condition of the broker-dealer SBSD or broker-dealer MSBSP to the Commission and to the public. In order to aid its analysis of whether there are other more appropriate alternatives relative to what it has proposed, the Commission requests comment.

The Commission has also considered alternatives to the notification and securities count proposals.[1298] An alternative to the proposed notification proposal would be to not have such a rule, or to have fewer events give rise to notification. Similarly, with respect to the quarterly securities count proposal, the Commission believes the alternative would be to specify a less frequent count or to omit a requirement for securities count.

The Commission has proposed the notification and securities count proposals because it preliminarily believes that the rules are an appropriate component of its oversight of the financial responsibility of firms engaged in a security-based swap business. The broker-dealer recordkeeping, reporting, notification, and security count requirements are part of the broker-dealer financial responsibility rules.[1299] 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 proposals (in conjunction with the recordkeeping and reporting proposals) are designed to promote compliance with the capital, margin, and segregation requirements for broker-dealers. The proposed recordkeeping, reporting, notification, and securities count requirements applicable to SBSDs and MSBSPs along with the proposed 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 proposed recordkeeping, reporting, notification, and securities count requirements applicable to SBSDs and MSBSPs are designed to promote compliance with the proposed capital, margin, and segregation requirements applicable to SBSDs and MSBSPs. Omitting such proposals would create regulatory

[1293] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213.

[1294] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70216 (stating a similar rationale for basing the proposed capital, margin, and segregation requirements for SBSDs on the broker-dealer capital, margin, and segregation requirements).

[1295] *See supra* section I.

[1296] *See supra* section II.B.2.b.

[1297] *See Capital Requirements of Swap Dealers and Major Swap Participants,* 76 FR 27813 (discussion of proposed CFTC Regulation 23.106).

[1298] *See supra* section II.D.1. (summarizing rationale underlying Rule 17a–13).

[1299] *See* 17 CFR 240.3a40–1.

disparities between broker-dealers, banks, and stand-alone SBSDs and stand-alone MSBSPs. For these reasons, the Commission preliminarily believes that alternative approaches would not be as effective in helping to ensure compliance with the proposed capital, margin, and segregation requirements applicable to SBSDs and MSBSPs. However, in order to assist its analysis of the proposed notification and securities count proposals, as well whether there are more appropriate alternatives, the Commission requests comment.

3. Requirements To Make and Keep Records

a. Rule 17a–3, as Proposed To Be Amended

Rule 17a–3 is proposed to be amended to account for security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs.[1300] The Commission is also proposing to add new provisions to Rule 17a–3 that would relate to its recently proposed capital, margin, and segregation requirements applicable to SBSDs and MSBSPs.[1301]

In addition, as discussed above, the Commission has proposed amendments to Rule 15c3–1 that would establish liquidity stress test requirements for ANC broker-dealers.[1302] The Commission is proposing to amend Rule 17a–3 to include a requirement that ANC broker-dealers make and keep current a report of the results of the monthly liquidity stress test, a record of the assumptions underlying the liquidity stress test, and the liquidity funding plan required under the proposed amendments to Rule 15c3–1.[1303]

The Commission would also add new provisions to Rule 17a–3 that are designed to create a record of the broker-dealer's compliance with business conduct standards that the Commission proposed pursuant to Exchange Act section 15F(h), and with the designated compliance officer requirement in Exchange Act section 15F(k) and Rule 15Fk–1.[1304]

The Commission is also proposing some changes that are designed to eliminate obsolete or rarely used provisions of Rule 17a–3.[1305] For example, the Commission is proposing to remove references in the rule to ''members,'' as a distinct class of registrant in addition to brokers and dealers.[1306] These references are redundant because the rule applies to brokers and dealers, which would include ''members'' of a national securities exchange since all such members are also broker-dealers.

Generally, the Commission would not expect the proposed changes to Rule 17a–3 to have a material economic effect, although as analyzed below the Commission does expect that there will be costs related to complying with the proposed rules.[1307] In order to assist its analysis the Commission generally requests comment about the general costs and benefits of the proposed rules. The Commission requests data to assess the costs and benefits of the proposals described above.

b. Proposed Rule 18a–5

The Commission is proposing new Rule 18a–5—which is modeled on Rule 17a–3, as proposed to be amended—to require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to make and keep current certain records.[1308] Not all of the provisions of Rule 17a–3 would be imported into proposed 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 stand-alone MSBSPs. Further, and as described above,[1309] the proposed requirements for bank SBSDs and bank MSBSPs, which would be included in paragraph (b) of proposed Rule 18a–5, are more limited than the proposed requirements that would apply to stand-alone SBSDs and stand-alone MSBSPs, which would be included in paragraph (a) of proposed Rule 18a–5. More limited requirements would apply to bank SBSDs and bank MSBSPs because the Commission's authority under section 15F(f)(1)(B)(i) of the Exchange Act is tied to activities related to their business as an SBSD or MSBSP,[1310] banks are already subject to the existing recordkeeping requirements from prudential regulators, and the prudential regulators are responsible for capital, margin, and other prudential requirements applicable to bank SBSDs and bank MSBSPs.

The Commission believes proposed Rule 18a–5 would provide improved regulatory oversight of the security-based swap activities of stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs. For reasons discussed above, the Commission preliminarily believes that the approach it has taken with respect to Rule 18a–5—basing it upon an existing rule (Rule 17a–3)—is a better approach than starting with a wholly new rule. The Commission believes that many non-broker-dealer SBSDs and non-broker-dealer MSBSPs will be affiliates of broker-dealers that already have familiarity with Rule 17a–3 upon which proposed Rule 18a–5 is modeled. Greater familiarity with the rule should ease compliance burdens and costs for those firms. The Commission acknowledges that with respect to firms not so affiliated, this approach would seem much less likely to ease compliance burdens. In order to aid the Commission's analysis of the effects on these unaffiliated firms, and whether there are better alternatives, the Commission requests comment.

As discussed in section V.C.1., above, the Commission believes that the proposed requirements to make and keep records could improve the regulatory oversight, risk documentation, and risk management of security-based swap activities.

The proposed requirements to make and keep records could also create costs to firms.[1311] These increased costs may cause firms to cease participating in the market, thereby potentially reducing efficiency due to loss of competition. In order to inform its analysis of the costs and benefits involved with the proposals, the Commission requests comment. Data to evaluate the costs and benefits of proposed Rule 18a–5 would be particularly useful to the Commission's analysis.

c. Request for Comment on Recordkeeping Provisions

The Commission also requests data to evaluate the impact of the proposals against the baseline. In addition, the

[1300] *See, e.g.,* paragraph (a)(1) of Rule 17a–3, as proposed to be amended (proposed addition of information that must be included in security-based swap purchase and sale blotters).

[1301] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70257–70274 (proposed margin requirements applicable to SBSDs).

[1302] *See* paragraph (f) of Rule 15c3–1, as proposed to be amended. *See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70252–70254.

[1303] *See* paragraph (a)(24) of Rule 17a–3, as proposed to be amended.

[1304] *See, e.g.,* paragraphs (a)(28) through (a)(30) of Rule 17a–3, as proposed to be amended. *See also Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42396.

[1305] *See supra* section II.A.2.b. (describing additional proposed amendments to Rule 17a–3).

[1306] *See, e.g.,* paragraph (a)(3) of Rule 17a–3, as proposed to be amended.

[1307] *See infra* section V.E.

[1308] *See supra* section II.A.2.a. (describing proposed Rule 18a–5).

[1309] *Id.*

[1310] *See* 15 U.S.C. 78o–10(f)(1)(B)(i).

[1311] *See infra* section V.E. (discussing implementation considerations).

Commission requests comment in response to the following questions:

1. In general terms, would the proposed rules result in effective documentation of the security-based swap transactions of broker-dealers, broker-dealer SBSDs, broker-dealer MSBSPs, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs? Please explain.

2. In general, would the proposed rules and rule amendments impact the capital of entities that would need to register as SBSDs or MSBSPs? For example, would the costs involved negatively impact the availability of funding to conduct the security-based swap activities? If so, what would be the extent of the impact to these entities?

3. How important is it that the recordkeeping and reporting rules for SBSDs and MSBSPs be analogous to the existing recordkeeping and reporting requirements for broker-dealers? How valuable or worthwhile are the benefits involved with this approach? How costly is such an approach?

4. To what extent would the proposed regulatory requirements impact the amount of liquidity provided for or required by security-based swap market participants, and to what extent will that affect the funding cost for the financial sector in particular and the economy in general? Please quantify.

5. Do the proposed record-making requirements provide a reasonable and workable solution for broker-dealers, SBSDs and MSBSPs? Please explain. Are there preferable alternatives? If so, describe those alternatives. Please specifically address why such alternatives are preferable and the nature to which they fulfill the Commission's need to ensure that the financial responsibility requirements applicable to broker-dealers, broker-dealer SBSDs, broker-dealer MSBSPs, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs are followed.

6. If an SBSD or MSBP currently already has sufficient technology to track its trading and risk exposure in security-based swaps, what additional costs, if any, would arise from the proposed rules?

4. Requirements To Preserve Records

As discussed above,[1312] Rule 17a–4 requires a broker-dealer to preserve certain types of records.[1313] The rule also prescribes the time periods 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.[1314] The Commission is proposing amendments to Rule 17a–4 to account for the security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, as well as certain technical amendments. With respect to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, the Commission is proposing new Rule 18a–6—modeled on Rule 17a–4, as proposed to be amended—to establish record preservation requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.

a. Rule 17a–4, as Proposed To Be Amended

As described above,[1315] paragraph (a) of Rule 17a–4 provides that broker-dealers subject to Rule 17a–3 must preserve for a period of not less than six years, the first two in an easily accessible place, certain records required to be made and kept current under Rule 17a–3.

Three-Year Preservation Requirement for Rule 17a–3 Records

As discussed above,[1316] paragraph (b)(1) of Rule 17a–4 provides that broker-dealers must preserve for at least three years, the first two in an easily accessible place,[1317] certain records required to be made and kept current under Rule 17a–3.[1318] The Commission is proposing to add cross-references to certain new paragraphs that would be added to Rule 17a–3 to address security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs.

The Commission preliminarily believes that the majority of the economic effects, ranging from firm-specific costs to effects on the overall security-based swap market, will be associated with the requirement that broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, make and keep current certain records as set forth in Rule 17a–3, as proposed to be amended. However, in order to assist it in considering the full range of costs and any economic effects associated with the proposed recordkeeping rules, the Commission requests data to assess the costs and benefits of the proposals.

Three-Year Preservation Requirement for Certain Other Records Made or Received

Paragraph (b) of Rule 17a–4 also provides that broker-dealers must preserve for a period of not less than three years, the first two in an easily accessible place, other categories of records if the broker-dealer makes or receives the record.[1319] As discussed above,[1320] the Commission is proposing amendments to these provisions in paragraph (b) of Rule 17a–4 to account for security-based swaps, and is proposing amendments that would require broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to preserve certain additional records related to security-based swap activities. For example, the Commission is proposing to amend the preservation requirement in paragraph (b)(4) of 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 would establish a preservation period for recorded telephonic communications that have been recorded and relate to security-based swap activity.

As discussed above in section V.C.1. of this release, the Commission believes that the proposed amendments to Rule 17a–4 will result in benefits of improving the regulatory oversight, risk documentation, and risk management of security-based swap activities. The Commission anticipates that there will also be costs related to the proposal.[1321] The Commission believes that the majority of the costs incurred by broker-dealer SBSDs and broker-dealer MSBSPs relating to recorded telephone

[1312] *See supra* section II.A.3.a. (discussing Rule 17a–4 retention requirements).

[1313] *See* 17 CFR 240.17a–5(b).

[1314] *See* 17 CFR 240.17a–5(a) and 240.17a–5(b)(1). Generally, the three year and six year retention periods in Rule 17a–4 track the self-regulatory organization requirements and certain State regulations that were in effect prior to the adoption of the National Securities Market Improvements Act of 1996, and they largely represent a codification of prudent recordkeeping practices of many broker-dealers. *Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934,* 66 FR 55819; *National Securities Market Improvements Act of 1996,* Public Law 104–290, 104 Stat. 3416 (1996).

[1315] *See supra* section II.A.3.a. (discussing Rule 17a–4 retention requirements).

[1316] *See supra* section II.A.3.a. (discussing Rule 17a–4 retention requirements).

[1317] The Commission has stated that ''Rule 17a–4 seeks to address the tension between the need for quick production of specific records and the volume of records generated on a daily basis, by requiring that more current records be retained in an ''easily accessible place,'' which the Commission has not defined. *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 22916.

[1318] *See* 17 CFR 240.17a–4(b)(1).

[1319] *See* 17 CFR 240.17a–4(b)(2) through (12).

[1320] *See supra* section II.A.3.a. (discussing paragraph (b) of Rule 17a–4, as proposed to be amended).

[1321] *See infra* section V.E. (discussing implementation considerations).

calls would enhance the internal controls and procedures relating the treatment of security-based swap-related telephone calls recorded by the firm. The Commission requests comment on the costs or benefits that may accrue in connection with the proposal.

b. Proposed Rule 18a–6

As described above, Rule 18a–6 is modeled on the retention requirements of Rule 17a–4, but modified to account for differences applicable to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.[1322]

Six-Year Preservation Requirement

The Commission proposes that many, but not all, of the same recordkeeping requirements that would be applicable to broker-dealer SBSDs and broker-dealer MSBSPs under the proposed amendments to Rule 17a–4 would also apply to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs under proposed Rule 18a–6.

Paragraph (a) of Rule 18a–6 would require 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. Further, paragraph (a)(1) of proposed Rule 18a–6 would apply to stand-alone SBSDs and stand-alone MSBSPs. Paragraph (a)(2) of proposed Rule 18a–6 would apply to bank SBSDs and bank MSBSPs.

Three-Year Preservation Requirement for Other Rule 18a–5 Records

As discussed above,[1323] paragraphs (a) and (b) of proposed Rule 18a–5 would require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to make and keep current records that are modeled on the records required to be made and kept under Rule 17a–3. Paragraph (b)(1) of proposed Rule 18a–6 would require that records required to be made by stand-alone SBSDs and stand-alone MSBSPs under Rule 18a–5, be retained for three years, the first two years in an easily accessible place. Paragraph (b)(2) of proposed Rule 18a–6 would establish a three-year record retention period for certain delineated records, as well as the records required to be made by bank SBSDs and bank MSBSPs under Rule 18a–5.

Three-Year Preservation Requirement for Certain Other Records Made or Received

The Commission is also proposing in paragraph (b) of Rule 18a–6 that stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs 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 SBSD or MSBSP makes or receives the record.[1324]

As discussed below, the Commission preliminarily believes that there will be costs stemming from the requirement that stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs make and keep current certain records as set forth in proposed Rule 18a–5.[1325] As further discussed below, the Commission preliminarily believes that the requirement to retain these records, once made and kept current, should represent a marginal cost to registrants.[1326]

In order to assist its evaluation of the costs and benefits, as well as any larger economic effects associated with the proposal, the Commission requests comment.

5. Reporting

As stated above, Rule 17a–5 has two main elements: (1) a requirement that broker-dealers file periodic unaudited reports containing information about their financial and operational condition on a FOCUS Report; and (2) a requirement that broker-dealers 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.[1327]

The reporting program codified in Rule 17a–5 is designed, among other things, to promote compliance with Rules 15c3–1 and 15c3–3 and to assist the Commission, SROs, and state securities regulators in conducting effective examinations of broker-dealers. Those publicly available broker-dealer reporting requirements, such as the statement of financial condition, would promote transparency of the financial and operational condition of the broker-dealer to the Commission, the firm's DEA, and to the public.

The Commission preliminarily believes that the economic effects associated with the new reporting requirements would depend upon the nature of the filings such registrants make today based upon their registration status (*e.g.,* broker-dealer vs. non-broker-dealer). The Commission preliminarily believes that the majority of the economic effects associated with the Title VII rulemakings will stem from the requirements relating to capital, margin, and segregation[1328] as compared to the proposed rules in the instant rulemaking.

The Commission is cognizant, however, that the proposed reporting requirements could create costs to firms, and indirectly to the financial markets. For example, the Commission recognizes that there will be new compliance and audit costs associated with the required financial report and compliance report. While the Commission is aware of these costs, section 15F(f) of the Exchange Act provides the Commission with authority to require each registered SBSD to make a report regarding, among other things, the financial condition of the firm. The Commission believes that it would be impractical to monitor the financial condition of SBSDs without periodic financial reports, including annual audited reports, that elicit detail about these firms' security-based swap activities.

The Commission notes that it has proposed steps to minimize costs where appropriate and consistent with its statutory mandate. For example and as described in more detail below,[1329] for stand-alone SBSDs, the Commission would not require the filing of several of the reports that are required to be filed by broker-dealers, such as the Form Custody or the information filed with SIPC by broker-dealers.[1330] Further, the decision to model Form SBS on the current FOCUS Report was made in part to reduce the uncertainty and additional compliance costs that would stem from devising an entirely new reporting form and rules. While the Commission understands that stand-alone SBSDs 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 SBSDs may be affiliated with or part of a larger

[1322] *See supra* section II.A.3.a. (discussing proposed amendments to Rules 17a–4 and 18a–6).

[1323] *See supra* section II.A.2.a. (discussing paragraphs (a) and (b) of proposed Rule 18a–5).

[1324] *See supra* section II.A.3.a. (discussing provision-by-provision retention provisions in Rules 17a–4 and proposed Rule 18a–6).

[1325] *See infra* section V.E.

[1326] *Id.*

[1327] *Id.* These requirements are described in more detail below.

[1328] For example, the Commission anticipates substantial economic costs to arise as a result of the capital, margin, and segregation requirements that have been proposed to apply to SBSDs and MSBSPs. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,*77 FR 70299–70328.

[1329] *See supra* section II.B.2.b.

[1330] *See* 17 CFR 240.17a–5(a)(4) and (e)(4).

financial firm that contains a broker-dealer, thus providing a source of experience, internal to the firm, with the FOCUS Report which in turn may reduce the compliance-related costs. Moreover, the accounting and legal communities are familiar with the FOCUS Report, so the Commission preliminarily believes that this familiarity should mitigate the compliance costs for stand-alone SBSDs insofar as outside assistance is well-versed with the FOCUS Report. At the same time, the Commission acknowledges that there may be stand-alone SBSDs affiliated with, for example, FCMs, and those firms would conceivably benefit from rules based upon or similar to CFTC rules.

In order to aid its analysis of the economic effects relating to the proposed reporting requirements, the Commission requests comment. Comments setting forth specific costs related to the proposed reporting requirements, as well as benefits, would be particularly helpful to the Commission's analysis.

a. Broker-Dealer SBSDs and Broker-Dealer MSBSPs

Form SBS

As described above,[1331] broker-dealer SBSDs and broker-dealer MSBSPs would file proposed Form SBS instead of a particular version of the FOCUS Report. An ANC broker-dealer that currently files FOCUS Part II CSE that registers with the Commission as an SBSD or MSBSP would experience the smallest marginal impact on its reporting obligations. This is the case because proposed Form SBS is modeled upon Part II CSE, but includes additional line items and sections to elicit more detail about security-based swap and swap activities.[1332] Similarly, for dealers currently registered as OTC derivatives dealers, to the extent these firms decide to register as broker-dealer SBSDs or broker-dealer MSBSPs, the Commission preliminarily believes that the burdens involved would be similarly modest to those encountered by the ANC broker-dealers because Part IIB of the FOCUS Report contains many similar line items as Part II CSE.[1333]

The information elicited by Form SBS from the ANC broker-dealers and OTC derivatives dealers that decide to register as broker-dealer SBSDs or broker-dealer MSBSPs should assist the Commission and the firms' DEAs to conduct effective examinations of broker-dealer SBSDs and broker-dealer MSBSPs. The broker-dealer SBSD and broker-dealer MSBSP reporting requirements would promote transparency of the financial and operational condition of the broker-dealer SBSD or broker-dealer MSBSP to the Commission and to the public.

With respect to the economic effects associated with this aspect of the proposal, the Commission preliminarily believes that the scope of additional information requested in Form SBS, generally related to the firms' security-based swap activities, is relatively circumscribed relative to what these registrants report in Part II CSE or Part IIB of the FOCUS Report.

With respect to broker-dealers that currently do not file FOCUS Part II CSE or FOCUS Part IIB, the Commission believes the economic impact and, more specifically, the costs associated with complying with new Form SBS, may be more substantial. This is the case because, as described above,[1334] Form SBS elicits much of the same information as FOCUS Part II CSE and FOCUS Part IIB, but includes additional line items and sections to elicit more detail about security-based swap and swap activities. Accordingly, for those firms not currently filing FOCUS Part II CSE or FOCUS Part IIB, there will be a greater change, in terms of the amount of information that will be elicited on the form. These firms may incur greater compliance-related costs.

The Commission has carefully considered Form SBS in light of its experience with broker-dealer regulation and in relation to its new statutory responsibilities under section 15F of the Exchange Act and preliminarily believes that Form SBS would promote compliance with Rules 15c3–1 and 15c3–3 and to assist the Commission, SROs, and state securities regulators in conducting effective examinations of broker-dealer SBSDs and broker-dealer MSBSPs. The proposed broker-dealer SBSD and broker-dealer MSBSP reporting requirements would promote transparency of the financial and operational condition of the broker-dealer to the Commission, the firm's DEA, and to the public.

The Commission has designed Form SBS to elicit the information that it believes it needs to effectively oversee the financial condition of broker-dealer SBSDs and broker-dealer MSBSPs. To aid its analysis of whether there are parts of Form SBS that could be curtailed or eliminated in order to lessen compliance-related costs, the Commission requests comment. To the extent that commenters believe that information the Commission has proposed to elicit is unnecessary, specific reasons for such a view would be particularly helpful. Moreover, if commenters object to certain sections of Form SBS, specific estimates of the costs to comply with those sections would also aid the Commission's analysis of regulatory necessity. Finally, in order to help it consider and evaluate the full range of effects associated with the proposal, the Commission requests data to assess the costs and benefits of the proposals with respect to the various classes of registrants (*e.g.,* Part IIA filers, Part II filers, Part IIB filers, and Part II CSE filers).

Audited Annual Reports

As discussed below, the Commission anticipates that there may be costs associated with broker-dealer SBSDs or broker-dealer MSBSPs completing and filing the annual reports required under paragraph (d) of Rule 17a–5.[1335] Currently, as described in more detail above, broker-dealers are required to file on an annual basis a financial report that includes many parts of the FOCUS Report in a format consistent with the version of FOCUS Report filed by the broker-dealer.[1336] The proposed amendments to the financial report would include additional information about the broker-dealer's security-based swap activity not included in the financial report currently filed by broker-dealer.[1337] Moreover, the proposal would increase the cost of completing the annual compliance report filed by a broker-dealer SBSD because the compliance report for such firms would include statements about the firm's compliance with proposed Rule 18a–4, the proposed customer segregation rule that would apply to broker-dealer SBSDs.[1338]

The Commission also anticipates that the cost to audit the annual reports filed by broker-dealer SBSDs or broker-dealer MSBSPs would rise.[1339] 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

[1331] *See supra* section II.B.2. (discussing broker-dealer SBSDs' and broker-dealer MSBSPs' use of proposed Form SBS).

[1332] *Id.*

[1333] *See supra* section II.B.2.b.

[1334] *See supra* section II.B.2.

[1335] *See infra* section V.E. (relating to implementation considerations).

[1336] *See* 17 CFR 240.17a–5(d)(2).

[1337] *Compare, e.g.,* FOCUS Report Part II CSE, *Statement of Financial Condition,* Line 4, *with* Form SBS, *Statement of Financial Condition,* Line 4.

[1338] *See supra* section II.B.3.a.; *see infra* section V.E.

[1339] *Id.*

of the broker-dealer's annual reports.[1340] The Commission believes the additional required components to the financial report and the compliance report would increase the costs of ongoing compliance as well as the annual audit.

Liquidity Stress Test

As discussed above,[1341] the Commission has proposed amendments to Rule 15c3–1 that would establish liquidity stress test requirements for ANC broker-dealers, which would include ANC broker-dealer SBSDs.[1342] Under the proposed liquidity stress test requirements, ANC broker-dealers would be required, among other things, to: (1) Perform a liquidity stress test at least monthly that takes into account certain assumed conditions lasting for 30 consecutive days; and (2) maintain at all times liquidity reserves based on the results of the liquidity stress test comprised of unencumbered cash or U.S. government securities.[1343] The proposed liquidity stress test requirement is designed to provide an additional level of protection against disruptions in the firm's ability to obtain funding for a firm with significant proprietary positions in securities or derivatives.[1344]

The Commission is proposing that ANC broker-dealers report to the Commission the results of the liquidity stress test on a monthly basis.[1345] The Commission has discussed the economic effects associated with the liquidity stress test requirement and requested comment on those effects.[1346] As discussed below, the Commission preliminarily believes that paragraph (a)(5)(vii) of Rule 17a–5 would create a cost to file the report, but that such costs would not materially contribute to the economic effects associated with the liquidity stress test proposal.[1347]

As discussed above in section V.C.1. of this release, above, the Commission believes that the proposed reporting requirements will result in benefits of improving the oversight, transparency, and accountability of security-based swap activities.

In order to help it consider and evaluate the full range of effects associated with the proposal, the Commission requests comment on the anticipated benefits and costs of this portion of the proposed rule changes. Quantitative and qualitative data would be particularly useful to the Commission in helping it evaluate the proposals.

b. Stand-Alone SBSDs

Form SBS

As described in more detail above,[1348] stand-alone SBSDs would be required to file Form SBS with the Commission or its designee on a monthly basis.[1349] Given that stand-alone SBSDs are not broker-dealers, these firms would not have experience filing the FOCUS Report, and thus reporting on Form SBS could represent a significant undertaking. While the Commission expects that stand-alone SBSDs currently prepare financial statements that encompass their security-based swap activity, the reporting on Form SBS may require that firms establish new systems that facilitate the reporting of the required information.[1350] Relative to what these firms generate now, Form SBS would likely elicit greater detail about the registrant's security-based swap positions, which in turn would require the registrants to have additional details about the firm's security-based swap positions in order to be able to provide the security-based swap information elicited by Form SBS. Since many of the entities that the Commission expects will register as stand-alone SBSDs are currently not regulated, they are likely to be unaccustomed to completing and filing detailed reports with financial regulators. Therefore, and as discussed below, the Commission anticipates that stand-alone SBSDs will bear substantial costs in connection with completing and filing Form SBS.[1351]

Audited Annual Reports

In addition, stand-alone SBSDs would be required to generate and file its financial report and compliance report with the Commission on an annual basis.[1352] While the Commission expects that stand-alone SBSDs currently prepare financial statements that encompass their security-based swap activity, under the proposed rules, stand-alone SBSDs would be required to prepare a financial report in a format consistent with Form SBS, which includes numerous entries, computations, and schedules that a stand-alone SBSD may not prepare on its own accord. The compliance report would contain several statements and descriptions related to the firm's compliance with the financial responsibility rules that would be entirely new for most stand-alone SBSD registrants. Stand-alone SBSDs would be required to hire a PCAOB-registered independent public accountant to prepare an audit report covering annual reports. As explained below, the Commission estimates that all stand-alone SBSDs would incur compliance-related costs engaging a PCAOB-registered accountant to perform the audit.[1353]

Stand-Alone ANC SBSD Reporting Requirements

For stand-alone ANC SBSDs, there would be a number of additional monthly and quarterly reporting requirements, independent of those on Form SBS.[1354] The additional stand-alone ANC SBSD reports are modeled on parallel reporting requirements for ANC broker-dealers.[1355] Consequently, stand-alone ANC SBSDs would be required to file the same types of additional reports relating to their use of internal models and liquidity stress tests as ANC broker-dealers, including ANC broker-dealer SBSDs.

As discussed below, the Commission preliminarily believes that stand-alone ANC SBSDs may incur compliance costs related to, among other things, preparing and filing the additional reports that would be required under the proposed rules.[1356] The Commission believes the additional reports that stand-alone ANC SBSDs would be required to file with the Commission would give rise to less substantial

[1340] *See supra* section II.B.1.

[1341] *See supra* section II.A.2.a.

[1342] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70252–70254. *See also* paragraph (f) of Rule 15c3–1, as proposed to be amended.

[1343] *Id.*

[1344] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70314.

[1345] *See* paragraph (a)(5)(vii) of Rule 17a–5, as proposed to be amended.

[1346] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70314.

[1347] *See infra* section V.E.

[1348] *See supra* section II.B.2.

[1349] The Commission estimates that nine of the approximately fifty entities that it anticipates to register with the Commission as SBSDs will be stand-alone SBSDs.

[1350] For example, stand-alone SBSDs would be required to submit computations relating to the firm's level of net capital, net capital required, and amount required to be held in the special reserve account for the exclusive benefit of security-based swap customers. *See supra* section II.B.2.

[1351] *See infra* section V.E.

[1352] *See* paragraph (c) of proposed Rule 18a–7.

[1353] *See infra* section V.E.

[1354] *See supra* section II.B.3.a. *See also* paragraph (a)(3) of proposed Rule 18a–7.

[1355] *Compare* paragraph (a)(3) of proposed Rule 18a–7, *with* paragraph (a)(5) of Rule 17a–5, as proposed to be amended.

[1356] *See infra* section V.E. *See also* paragraph (a)(3) of proposed Rule 18a–7.

compliance costs relative to the other costs under the proposal because the additional reporting obligations for such firms are relatively few and are generally closely related to their use of internal models approved by the Commission to calculate market and credit risk. Stand-alone ANC SBSDs would incur the majority of costs associated with these internal models in designing and operating the models themselves rather than the reports arising from these models.

The Commission also preliminarily believes that utilizing the new reporting requirements would have the benefit of helping the Commission evaluate whether a stand-alone SBSD is operating in compliance with the Exchange Act and the rules thereunder. For stand-alone SBSDs that previously did not produce detailed financial statements, the proposal could require these firms to upgrade their technology to store and maintain the information they need to report on Form SBS. These upgrades would likely entail costs for the firms, discussed below, but also possibly help these firms more efficiently track their trading and risk exposure in security-based swaps.[1357] The Commission also preliminarily believes that the availability of Form SBS will greatly enhance the Commission's ability to oversee the financial condition of these registrants, and the public availability of a firm's audited Statement of Financial Condition and net capital computations will facilitate the public's evaluation of the financial health of a registrant.

In order to assist its evaluation of any potential economic effects associated with the proposals, the Commission requests data to help it evaluate the costs and benefits commenters believe would result.

c. Stand-Alone MSBSPs

The Commission preliminarily believes the economic impact associated with the proposed reporting requirements on stand-alone MSBSPs would be significantly less than the effects upon stand-alone SBSDs. As with stand-alone SBSDs, the reporting requirement would be an entirely new obligation for stand-alone MSBSPs. However, there would be a number of important differences between the reporting requirements of stand-alone MSBSPs as compared to stand-alone SBSDs.

Form SBS

First, stand-alone MSBSPs would be required to complete a simpler Computation of Tangible Net Worth, compared to the much longer and complex Computation of Net Capital and Computation of Minimum Regulatory Capital Requirements sections in Part 1 of the form that stand-alone SBSDs are required to complete.[1358] The Commission believes that stand-alone SBSDs and stand-alone MSBSPs will incur costs completing those parts of Form SBS that are applicable to such entities, as discussed below.[1359] Moreover, stand-alone SBSDs would not be required to complete the sections in Part 1 of Form SBS 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 under proposed Rule 18a–4.[1360] Furthermore, stand-alone MSBSPs would not be required to complete and file a number of sections of Part 1 of the form that relate to the operational data related to the firm; specifically, they would not be required to complete and file the Capital Withdrawals, Capital Withdrawals Recap, and the Financial and Operational Data sections of Form SBS.[1361]

Audited Annual Reports

Stand-alone MSBSPs would be required to comply with the proposed requirements relating to the preparation, auditing, and filing of the annual reports.[1362] As discussed below, the Commission estimates that all stand-alone MSBSPs would incur costs stemming from the requirement to engage a PCAOB-registered auditor.[1363] The Commission anticipates that stand-alone MSBSPs will incur fewer costs in complying with these requirements as compared to stand-alone SBSDs because stand-alone MSBSPs would not be required to file the compliance report or the exemption report.

As discussed above in section V.C.1. of this release, the Commission believes that the proposed reporting requirements for stand-alone MSBSPs will result in benefits by improving the regulatory oversight of security-based swap activities. The Commission also recognizes that the proposed reporting requirements would create costs. Preliminarily, the Commission believes most of these costs would be compliance-related, as discussed in more detail below.[1364] In order to help it consider and evaluate the full range of costs and larger economic effects, if any, associated with the proposed requirement for stand-alone MSBSPs to complete and submit Form SBS, and to submit annual audited financial statements, the Commission requests comment. Data to assess the costs and benefits of the reporting requirements that would apply to stand-alone MSBSPs would be particularly useful.

d. Bank SBSDs and Bank MSBSPs

As described above,[1365] bank SBSDs and bank MSBSPs would also have to periodically complete and file Form SBS with the Commission. However, relative to broker-dealer SBSDs, broker-dealer MSBSPs, stand-alone SBSDs, and stand-alone MSBSPs, banks would report less information on Form SBS. The financial information bank SBSDs and bank MSBSPs would provide in Part 2 of the Form is based on the ''call report'' banks file with the prudential regulators.[1366] Bank SBSDs and bank MSBSPs would also report, in Part 5 of Form SBS, information relating to their security-based swap activities, consistent with the directive in section 15F(f) of the Exchange Act. Bank SBSDs and bank MSBSPs would also be required to report on change of fiscal year, as well as if the registrant changes accountants. However, bank SBSDs and bank MSBSPs would not be required to complete and file the audited financial report. The Commission has limited the number of schedules that would be required to be completed and filed by bank SBSDs and bank MSBSPs within Part 5 of Form SBS to one schedule that elicits detailed information about the firm's security-based swap positions. This requirement in Part 5 would require the bank SBSD or bank MSBSP to create and maintain additional details about the firm's security-based swap positions in order to be able to disclose the necessary detail on Form SBS.

As discussed in more detail below, the Commission preliminarily believes that bank SBSDs and bank MSBSPs will

[1357] *See infra* section V.E.

[1358] *Compare* Form SBS, *Computation of Tangible Net Worth, with* Form SBS, *Computation of Net Capital (Filer Authorized to Use Models)* and Form SBS, *Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer).*

[1359] *See infra* section V.E.

[1360] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers* and *Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70274–70288.

[1361] *See* Form SBS, *Capital Withdrawals, Capital Withdrawals Recap,* and *Financial and Operational Data.*

[1362] *See supra* section II.B.3.a.

[1363] *See infra* section V.E.

[1364] *See infra* section V.E.

[1365] *See supra* section II.B.2.

[1366] *See* 12 U.S.C. 324; 12 U.S.C. 1817; 12 U.S.C. 161; 12 U.S.C. 1464.

incur compliance costs related to reporting the information that would be required on Form SBS.[1367] However, the Commission has limited the number of schedules to be reported in Part 5 to one schedule that is generally derived from the bank SBSD's or bank MSBSP's call report. Thus, the Commission does not believe Part 2 would require substantial additional effort to complete.[1368]

The Commission preliminarily believes the reporting requirements for bank SBSDs and bank MSBSPs would help ensure that registrants follow applicable capital, margin, and segregation rules. The Commission believes that such capital, margin, and segregation rules are an integral part to ensuring that security-based swap activity is conducted in a financially responsible manner.

The Commission requests comment about its analysis of the costs and benefits of the proposal with respect to bank SBSDs and bank MSBSPs. The Commission requests data to assess the costs and benefits of the proposals for bank SBSDs and bank MSBSPs.

6. Notification Requirements

As discussed above,[1369] the Commission is proposing certain notification requirements for SBSDs and MSBSPs that are, in general, modeled on existing notification provisions that apply to broker-dealers pursuant to Rule 17a–11. As discussed below, the Commission has utilized its experience with broker-dealers utilizing Rule 17a–11 to prepare cost estimates of certain compliance-related expenses.[1370] As with the other proposals being considered, the Commission believes that the vast majority of the economic effects associated with registering as an SBSD or MSBSP would stem from the capital, margin, and segregation rules that the Commission proposed pursuant to Title VII of the Dodd-Frank Act.[1371]

a. Broker-Dealer SBSDs and Broker-Dealer MSBSPs

A broker-dealer SBSD would be required to notify the Commission when it fails to make a deposit in its security-based swap customer account, as required by proposed Rule 18a–4.[1372] An ANC broker-dealer would be required to give immediate notice to the Commission if a liquidity stress test it performs indicates an insufficient amount of liquidity reserve.[1373] Finally, broker-dealer MSBSPs would be required to notify the Commission when their level of tangible net worth fell below $20 million.[1374]

Outside of certain compliance-related costs, discussed below, the Commission does not believe that the notification requirements would have an economic impact.[1375] In each case, the notification requirement would be incidental to a related underlying substantive obligation that would be the primary source of economic impact.

As discussed above in section V.C.1. of this release, the Commission believes that the proposed amendments to Rule 17a–11 would result in improving the Commission and DEA oversight of broker-dealer SBSDs and broker-dealer MSBSPs' security-based swap activities, including activities and financial conditions that suggest a material level of risk to the firm.

The Commission requests comment about its analysis of the costs and benefits of the proposal with respect to broker-dealer SBSDs and broker-dealer MSBSPs. The Commission requests data to assess the costs and benefits of the proposals for broker-dealer SBSDs and broker-dealer MSBSPs.

b. Stand-Alone SBSDs, Stand-Alone MSBSP's, Bank SBSDs, and Bank MSBSPs

The Commission is proposing to establish notification requirements in Rule 18a–8 for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs that are modeled closely upon the requirements applicable to broker-dealers. First, the Commission is proposing to include a net capital deficiency and tentative net capital deficiency notification requirement in paragraph (a)(1) of proposed Rule 18a–8 applicable to stand-alone SBSDs 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 proposed to be amended.[1376] Furthermore, a stand-alone MSBSP would be required to notify the Commission when it fails to maintain a positive tangible net worth.[1377] The Commission is also proposing to include ''early warning'' notification requirements in paragraph (b) of proposed Rule 18a–8 that would be applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled after the relevant early warning provisions applicable to broker-dealers in paragraph (b) of Rule 17a–11, as proposed to be amended.[1378] The Commission also is proposing a requirement for a stand-alone SBSD to notify the Commission in the event of the discovery of a material weakness, as is required for broker-dealers under paragraph (d) of Rule 17a–11, as proposed to be amended.[1379] Moreover, the proposed requirement for a stand-alone SBSD to notify the Commission if it fails to make a required deposit in its security-based swap customer reserve account is modeled on a similar proposed requirement applicable to broker-dealers for failure to make a required deposit into a security-based swap customer account.[1380]

The proposed requirement for a bank SBSD, bank MSBSP, stand-alone SBSD, and stand-alone MSBSP 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.[1381] The proposed requirement for stand-alone ANC SBSDs to notify the Commission of an insufficient level of liquidity reserves is modeled after a similar requirement for ANC broker-dealer SBSDs.[1382]

With respect to bank SBSDs and bank MSBSPs, the Commission is proposing to include a notification requirement in proposed Rule 18a–8 that would require these entities to give the Commission notice when they file an adjustment of its reported capital category with its prudential regulator by transmitting a

[1367] *See infra* section V.E.

[1368] Whenever possible, the Commission has proposed the same line item numbers as are used for the call report (but appended with the letter ''b'' in Form SBS) to facilitate a bank SBSD's or bank MSBSP's use of data from the call report.

[1369] *See supra* section II.C.1.

[1370] *See infra* section V.E.

[1371] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70276.

[1372] *See* paragraph (f) of Rule 17a–11, as proposed to be amended.

[1373] *See* paragraph (e) of Rule 17a–11, as proposed to be amended.

[1374] *See* paragraph (b)(6) of Rule 17a–11, as proposed to be amended.

[1375] *See infra* section V.E.

[1376] *Compare* paragraph (a)(1) of proposed Rule 18a–8, *with* paragraph (a) of Rule 17a–11, as proposed to be amended.

[1377] *See* paragraph (a)(2) of proposed Rule 18a–8.

[1378] *Compare* paragraph (b) of proposed Rule 18a–8, *with* paragraphs (b)(3), (b)(4), and (b)(6) of Rule 17a–11, as proposed to be amended.

[1379] *Compare* paragraph (e) of proposed Rule 18a–8, *with* paragraph (d) of Rule 17a–11, as proposed to be amended. The Commission notes that paragraph (d) of Rule 17a–11, as proposed to be amended, also requires notification of the discovery of a ''material inadequacy'' to an over-the-counter derivatives dealer.

[1380] *Compare* paragraph (g) of proposed Rule 18a–8, *with* paragraph (f) of Rule 17a–11, as proposed to be amended.

[1381] *Compare* paragraph (d) of proposed Rule 18a–8, *with* paragraph (c) Rule 17a–11, as proposed to be amended.

[1382] *Compare* paragraph (f) of proposed Rule 18a–8, *with* paragraph (e) Rule 17a–11, as proposed to be amended.

copy of the notice to the Commission.[1383]

In general, the Commission preliminarily believes most of the costs stemming from the notification proposals would arise from preparing and filing the notices.[1384]

These notices serve an important role in the context of the reporting and recordkeeping rules for broker-dealers, broker-dealer SBSDs, broker-dealer MSBSPs, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs 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 would alert the Commission to the fact that a registrant may lack sufficient capital to continue to operate its business and meet its obligations to customers and counterparties. The notification requirements are thus critical to helping the Commission fulfill its statutory responsibility to monitor whether SBSDs and MSBSPs are operating in compliance with the Exchange Act and the rules thereunder.[1385]

In order to aid its analysis, the Commission generally requests comment about the general costs and benefits of the Rule 17a–11, as proposed to be amended, and proposed Rule 18a–8. The Commission requests data to evaluate the costs and benefits of the proposals.

7. Quarterly Securities Count

As discussed in greater detail above,[1386] the Commission is also proposing to establish a securities count program for SBSDs 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 SBSDs would be subject to proposed Rule 18a–9. For reasons explained above, proposed Rule 18a–9 would not apply to stand-alone MSBSPs, bank SBSDs, or bank MSBSPs.[1387]

Paragraph (b) of Rule 17a–13 prescribes the requirement to perform a quarterly securities count and specifies the steps a broker-dealer must take in performing a count. Paragraph (c) of Rule 17a–13 prescribes the timing of the count, permitting a broker-dealer to perform the securities count on a rolling basis throughout the quarter as opposed to all in one day. Paragraph (d) of Rule 17a–13 provides that the examination, count, verification, and comparison performed under the rule must be done 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. Proposed Rule 18a–9 applies substantially all the same affirmative obligations to stand-alone SBSDs that apply to broker-dealers under Rule 17a–13.[1388]

As was discussed above,[1389] Rule 17a–13, the model for proposed 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, failing to adequately check and count securities, created a serious ''paper work crisis'' in the securities markets.[1390] The Commission preliminarily believes that instituting a parallel provision could help to avoid a similar problem for stand-alone SBSDs. Moreover, the Commission preliminarily believes that to the extent a stand-alone SBSD has not invested in the technology necessary to help ensure that it can accurately track and safeguard securities, the proposed rule will require such investments to be made,[1391] which could improve the quality of such tracking and safeguarding.

The Commission preliminarily believes most of the negative economic effects stemming from the securities count proposal would arise from regulatory and compliance costs. The Commission believes that the costs involved, and any larger economic effects, should be similar to those associated with Rule 17a–13 and would be related primarily to the development and maintenance of internal procedures and controls and the investment in technology.[1392]

The Commission generally requests comment about its analysis of the general costs and benefits of the proposed securities count rules for stand-alone SBSDs. The Commission requests data to assess the costs and benefits of the proposals for the stand-alone SBSDs.

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.[1393] 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.[1394] 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.[1395] As stated above, the Commission believes that the recordkeeping, reporting, notification, and securities count rules and rule amendments being proposed today 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 proposals.[1396] Thus, while the Commission would expect that the adoption of these proposed rules and rule amendments, and their attendant benefits and costs, would affect competition, efficiency, and capital formation, the Commission preliminarily believes that such impact will be more limited than the impact from the capital, margin, and segregation proposals. In most instances, the Commission believes the costs will consist of the implementation-related costs of the proposed rules and rule amendments and the benefits will be those that stem from enabling the Commission to evaluate whether SBSDs and MSBSPs are in compliance with the financial responsibility rules governing security-based swap activities. The Commission

[1383] *See supra* section II.C.2. *See also* paragraph (c) of proposed Rule 18a–8.

[1384] *See infra* section V.E.

[1385] *See* 15 U.S.C. 78o–10(f).

[1386] *See supra* section II.D.1.

[1387] *Id.*

[1388] *Compare* proposed Rule 18a–9, *with* 17 CFR 240.17a–13. Proposed Rule 18a–9 omits the exemptions from applicability of the rule that appear in paragraphs (a)(1), (a)(2), (a)(3), and (e) of Rule 17a–13 because those exemptions relate to broker-dealer-specific functions and broker-dealer registration status. *See* 17 CFR 240.17a–13(a) and (e).

[1389] *See supra* section II.D.1.

[1390] *Id.*

[1391] *See infra* section V.E.

[1392] *Id.*

[1393] *See* 15 U.S.C. 78c(f).

[1394] *See* 15 U.S.C. 78w(a)(2).

[1395] *Id.*

[1396] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213.

requests comment on its analysis and underlying assumptions in this regard.

In the aggregate, the proposed recordkeeping, reporting, and notification rules would be an integral part of the proposed financial responsibility rules governing security-based swaps. The rules are designed to provide greater regulatory transparency into the business activities of these firms and to assist the Commission and other regulators in reviewing and monitoring compliance with the capital, margin, and segregation requirements. In general, the Commission believes that the proposals would thus help ensure that firms that engage in security-based swap activity do so in a financially responsible manner. The Commission further believes that the proposed rules and rule amendments, by improving its ability to monitor the financial condition of these registrants, could contribute to confidence in the market and willingness of market participants to engage in activities. It is the Commission staff's experience that greater confidence in a market promotes greater participation, leading to increased competition and efficiency, which have a positive effect on capital formation in the security-based swap market.

The Commission is cognizant, however, that it must be sensitive to the costs and burdens imposed by its rules. For example, overly restrictive or costly recordkeeping requirements could reduce the willingness of firms to engage in such trading. This could, in turn, increase transaction costs for market participants and contribute to less liquidity in the market. Even if the cost of overly restrictive recordkeeping, reporting, notification, and securities count requirements were shouldered only by those market participants that are subject to them, the excess compliance costs incurred would not be available for potentially more efficient uses, which thereby could distort capital allocation and, in turn, adversely affect capital formation. The Commission preliminarily believes the proposed recordkeeping, reporting, securities count, and notification proposals are unlikely to materially increase the barriers to entry in this market.

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. As stated above, the Commission estimates that approximately seventeen broker-dealers will register as SBSDs or MSBSPs and approximately twenty-five registered broker-dealers will be engaged in security-based swap activities but would not be required to register as an SBSD or MSBSP.[1397] In addition, a broker-dealer may elect to register an affiliated entity as an SBSD or MSBSP, instead of registering the broker-dealer itself as an SBSD or MSBSP. A market participant unaffiliated with a broker-dealer, including a bank, which conducts security-based swap activity in the U.S. may also register as an SBSD or MSBSP. As stated above, the Commission estimates that approximately thirty-four such entities will register as SBSDs or MSBSPs.[1398] As discussed above, as of April 1, 2013, there were 4,545 broker-dealers registered with the Commission.

To the extent that the proposed rules are burdensome or costly, they may impact the incentives of market participants in terms of whether they seek to register as SBSDs or MSBSPs. If fewer firms register, this could adversely impact competition and the overall efficiency of the U.S. capital markets as fewer firms will conduct security-based swap activities in the U.S. For example, excessive costs could discourage firms from engaging in security-based swap trading, which would reduce competition among market participants, thereby 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 cost increases could lead to certain broker-dealers ceasing to engage in security-based swap trading, which could then reduce competition and impose inefficiency costs on the security-based swap marketplace. At the same time, these market participants may seek to conduct the security-based swap business in jurisdictions where regulations are, or are perceived to be, less burdensome.

In order to assist its evaluation of the proposed rules and rule amendments' effects on efficiency, competition, and capital formation, the Commission requests comment. Commenters are asked to be as specific as possible in identifying those rule proposals that are particularly beneficial or problematic, as the case may be, and in identifying alternative approaches or other ways in which the harmful effect(s) of the proposals can be ameliorated or eliminated.

[1397] *See supra* section IV.C.

[1398] *Id.*

E. Implementation Considerations

The proposed new rules and rule amendments, as discussed above, would impose certain implementation burdens and related costs on SBSDs and MSBSPs, as well as broker-dealers. These costs may include start-up costs, including personnel and other costs, such as technology costs, to comply with the proposed new rules and rule amendments. The Commission understands that entities that will engage in security-based swap transactions currently incur costs during their normal business activities and the proposed new rules would impose incremental costs. While they are not negligible, the Commission preliminarily believes, as discussed above, that they are unlikely to materially increase costs.

Based on section IV.D. of this release, the Commission has estimated the related costs of these implementation requirements for SBSDs, MSBSPs, and broker-dealers.[1399] The Commission estimates for all SBSDs and MSBSPs, these initial implementation costs to be approximately $10 million and the ongoing costs of implementation to be approximately $9 million, as summarized in more detail below.[1400]

Rule 17a–3, which requires broker-dealers to make and keep current certain records, would be amended to account for security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs.[1401] The Commission is also proposing to add new provisions to Rule 17a–3 that would relate to the recently proposed margin requirements applicable to SBSDs.[1402] Across all types of broker-dealers, including broker-dealers not registered as SBSDs or MSBSPs, the requirements are estimated to impose a one-time and annual aggregate cost of

[1399] *See* section IV.D. of this release (discussing total initial and annual recordkeeping and reporting burdens of the proposed rules and rule amendments).

[1400] The Commission has also proposed technical amendments which it estimates will not impose material additional costs.

[1401] *See, e.g.,* paragraph (a)(1) of Rule 17a–3, as proposed to be amended (proposed addition of information that must be included in security-based swap purchase and sale blotters).

[1402] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70257–70274 (proposed margin requirements applicable to SBSDs).

approximately $925,360[1403] and $282,807, respectively.[1404]

The Commission is proposing new Rule 18a–5—which is modeled on Rule 17a–3, as proposed to be amended—to require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to make and keep current certain records.[1405] The Commission estimates that proposed Rule 18a–5 would result in total initial industry cost of $2,848,260 to SBSDs and MSBSPs not registered as broker-dealers.[1406] On an annual basis, the Commission estimates that proposed Rule 18a–5 would result in $890,475 of total industry costs to SBSDs and MSBSPs not registered as broker-dealers.[1407]

As discussed above, the Commission is proposing amendments to Rule 17a–4 to account for the security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, as well as certain largely non-substantive technical amendments.[1408] The Commission estimates that the proposed amendments to Rule 17a–4 would result in a total initial industry cost of $1,167,452 to broker-dealers.[1409] On an annual basis, the Commission estimates that the proposed amendments to Rule 17a–4 would result in $174,388 of total annual aggregate industry costs to broker-dealers.[1410]

The Commission is proposing new Rule 18a–6—modeled on Rule 17a–4, as proposed to be amended—to establish record preservation requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs. The Commission estimates proposed Rule 18a–6 would result in $4,054,996 of initial costs to the industry[1411] and $1,038,660 of annual costs to the industry.[1412]

As stated above, the Commission is proposing to amend Rule 17a–5, to require broker-dealer SBSDs and broker-dealer MSBSPs to file proposed Form SBS, instead of a particular part of the FOCUS Report.[1413] The Commission is also proposing amendments to Rule 17a–5 to require additional information about the broker-dealer's security-based swap activity in the financial report filed by broker-dealers,[1414] and to require ANC broker-dealers to report to the Commission the results of the liquidity stress test on a monthly basis.[1415] The Commission estimates that the amendments to Rule 17a–5 would result in an initial total cost of $158,710 to broker-dealers.[1416] On an annual basis, the Commission estimates that the amendments to Rule 17a–5 would result in $1,089,450 of total annual costs to broker-dealers.[1417]

The Commission is proposing Rule 18a–7 to provide reporting requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs that are analogous to the reporting requirements proposed for broker-dealer SBSDs and broker-dealer MSBSPs. Proposed Rule 18a–7 would also require stand-alone SBSDs and stand-alone MSBSPs to file with the Commission an audited annual report, as described above.[1418] The Commission estimates that proposed Rule 18a–7 would result in an initial industry cost of $777,410.[1419] The Commission estimates that proposed Rule 18a–7 would result in an annual industry cost of $5,500,693.24.[1420]

As described in more detail above, the Commission is proposing to establish notification requirements to require SBSDs and MSBSPs to timely notify the Commission of potential problems at these registrants.[1421] The Commission is proposing to amend Rule 17a–11 to add certain notification requirements for broker-dealer SBSDs and broker-dealer MSBSPs. In the aggregate, the Commission expects the proposed amendments to Rule 17a–11 to result in an annual industry cost of $29,859 to broker-dealer SBSDs and broker-dealer MSBSPs.[1422]

The Commission is also proposing Rule 18a–8 to establish reporting requirements for stand-alone SBSDs and

[1403] 3,440 hours x $269/hour national hourly rate for a compliance manager = $925,360. *See supra* section IV.D.1. (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 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.

[1404] 4,489 hours x $63/hour national hourly rate for a compliance clerk = $282,807. *See supra* section IV.D.1. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed 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.

[1405] *See supra* section II.A.2.a. (describing proposed Rule 18a–5).

[1406] (10,540 hours × $269/hour national hourly rate for a compliance manager) + $13,000 in external costs = $2,848,260. *See supra* section IV.D.1. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed Rule 18a–5).

[1407] (13,175 hours × $63/hour national hourly rate for a compliance clerk) + $60,450 in external costs = $890,475. *See supra* section IV.D.1. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed Rule 18a–5).

[1408] *See supra* section II.A.3.a.

[1409] 3,718 hours × $314/hour national hourly rate for a senior database administrator = $1,167,452. *See supra* section IV.D.2. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed 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 an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[1410] (1,716 hours × $63/hour national hourly rate for a compliance clerk) + $66,280 in external costs = $174,388. *See supra* section IV.D.2. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–4).

[1411] 12,914 hours × $314/hour national hourly rate for a senior database administrator = $4,054,996.

[1412] (9,780 hours × $63/hour national hourly rate for a compliance clerk) + (38 hours × $379/hour for national hourly rate for an attorney) + $204,078 in external costs = $1,038,660.

[1413] *See supra* section II.B.2.b.

[1414] *Compare, e.g.,* FOCUS Report Part II CSE, *Statement of Financial Condition,* Line 22, *with* Form SBS, *Statement of Financial Condition,* Line 22.

[1415] *See* paragraph (a)(5)(vii) of Rule 17a–5, as proposed to be amended.

[1416] 590 hours × $269/hour national hourly rate for a compliance manager = $158,710. *See supra* section IV.D.3. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–5). The majority of costs that broker-dealers would incur as a result of the amendments to Rule 17a–5 are expected to result from the additional information elicited in Form SBS, as compared to the FOCUS Report. Because broker-dealers would be required to file Form SBS on an ongoing basis, it is characterized as an annual cost, rather than an initial cost.

[1417] 4,050 hours × $269/hour national hourly rate for a compliance manager = $1,089,450. *See supra* section IV.D.3. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–5).

[1418] *See supra* section II.B.3. (filing of annual audited reports and other reports).

[1419] 2,890 hours × $269/hour national hourly rate for a compliance manager = $777,410. *See supra* section IV.D.3. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–5 and proposed Rule 18a–7). The majority of costs SBSDs and MSBSPs would incur as a result of proposed Rule 18a–7 is expected to result from the information elicited in Form SBS and the required annual audit. Because the additional information in the Form SBS and the annual audit would be required on an ongoing basis, the Commission is characterizing them as ongoing costs.

[1420] (3,978 hours × $63/hour national hourly rate for a compliance clerk) + $5,250,079 in external costs = $5,500,693. *See supra* section IV.D.3. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–5 and proposed Rule 18a–7).

[1421] *See supra* section II.C.2. (proposed amendments to Rule 17a–11 and proposed Rule 18a–7).

[1422] (100 hours +10 hours + 1 hour) × $269/hour national hourly rate for a compliance manager = $29,859. *See supra* section IV.D.4. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–11 and proposed Rule 18a–8).

stand-alone MSBSPs that are analogous to the reporting requirements for broker-dealer SBSDs and broker-dealer MSBSPs, as well as a separate notification requirement for bank SBSDs and bank MSBSPs. The Commission expects that proposed Rule 18a–8 would result in an annual industry cost of $1,237 to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.[1423]

Proposed Rule 18a–9, which is modeled on Rule 17a–13, would require stand-alone SBSDs to establish a securities count program.[1424] The Commission estimates that proposed Rule 18a–9 would impose an initial industry-wide cost of $76,725[1425] and an industry-wide annual cost of $113,400 per year.[1426]

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') [1427] requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) [1428] of the Administrative Procedure Act,[1429] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities''.[1430] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which, if adopted, would not have a significant economic impact on a substantial number of small entities.[1431]

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,[1432] or (2) a broker-dealer 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 Rule 17a–5(d) under the Exchange Act,[1433] 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.[1434] Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (1) for entities in credit intermediation and related activities,[1435] firms with $175 million or less in assets; (2) for non-depository credit intermediation and certain other activities,[1436] firms with $7 million or less in annual receipts; (3) for entities in financial investments and related activities,[1437] firms with $7 million or less in annual receipts; (4) for insurance carriers and entities in related activities,[1438] firms with $7 million or less in annual receipts; and (5) for funds, trusts, and other financial vehicles,[1439] firms with $7 million or less in annual receipts.[1440]

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 would be covered by the SBSD and MSBSP definitions. Subject to certain exceptions, section 3(a)(71)(A) of the Exchange Act defines *security-based swap dealer* to mean any person who: (1) holds itself out as a dealer in security-based swaps; (2) makes a market in security-based swaps; (3) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or (4) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps. Section 3(a)(67)(A) of the Exchange Act defines *major security-based swap participant* to be any person: (1) who is not an SBSD; and (2) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding both positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or that is a financial entity that is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate federal banking regulator;

[1423] 4.6 hours × $269/hour national hourly rate for a compliance manager = $1,237. *See supra* section IV.D.4. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–11 and proposed Rule 18a–8).

[1424] *See supra* section II.D.

[1425] 225 hours × $341/hour national hourly rate for a senior operations manager = $76,725. *See supra* section IV.D.5. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed 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.

[1426] 900 hours × $126/hour national hourly rate for an operations specialist = $113,400. *See supra* section IV.D.5. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed 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.

[1427] *See* 5 U.S.C. 601 *et seq.*

[1428] *See* 5 U.S.C. 603(a).

[1429] *See* 5 U.S.C. 551 *et seq.*

[1430] 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 Rule 0–10, 17 CFR 240.0–10. *See Statement of Management on Internal Accounting Control,* Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982).

[1431] *See* 5 U.S.C. 605(b).

[1432] *See* 17 CFR 240.0–10(a).

[1433] *See* 17 CFR 240.17a–5(d).

[1434] *See* 17 CFR 240.0–10(c).

[1435] Including commercial banks, savings institutions, credit unions, firms involved in other depository credit intermediation, credit card issuing, sales financing, consumer lending, real estate credit, and international trade financing.

[1436] Including firms involved in secondary market financing, all other non-depository credit intermediation, mortgage and nonmortgage loan brokers, financial transactions processing, reserve and clearing house activities, and other activities related to credit intermediation.

[1437] Including firms involved in investment banking and securities dealing, securities brokerage, commodity contracts dealing, commodity contracts brokerage, securities and commodity exchanges, miscellaneous intermediation, portfolio management, providing investment advice, trust, fiduciary and custody activities, and miscellaneous financial investment activities.

[1438] Including direct life insurance carriers, direct health and medical insurance carriers, direct property and casualty insurance carriers, direct title insurance carriers, other direct insurance (except life, health and medical) carriers, reinsurance carriers, insurance agencies and brokerages, claims adjusting, third party administration of insurance and pension funds, and all other insurance related activities.

[1439] Including pension funds, health and welfare funds, other insurance funds, open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles.

[1440] *See* 13 CFR 121.201.

and maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.[1441]

Based on feedback from industry participants about the security-based swap markets, entities that will qualify as SBSDs and MSBSPs, whether registered broker-dealers or not, will likely exceed the thresholds defining ''small entities'' set out above. Thus, it is unlikely that the requirements applicable to SBSD and MSBSPs that would be established under the proposed amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11, and proposed new Rules 18a–5, 18a–6, 18a–7 and 18a–8 and 18a–9, would have a significant economic impact on any small entity.

The Commission estimates that there are approximately 735 broker-dealers that were ''small'' for the purposes Rule 0–10.[1442] 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 would apply to all broker-dealers with such positions. These proposed amendments, therefore, would apply to all ''small'' broker-dealers in that they would be subject to the requirements in the proposed amendments. It is likely, however, that these proposed amendments would have no, or little, impact on ''small'' broker-dealers, since most, if not all, of these firms generally would not hold these types of positions. In addition, the technical amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11 would apply to all broker-dealers, including broker-dealers that are small. However, these amendments would have no impact on broker-dealers, including ''small'' broker-dealers, because they would not establish new substantive requirements.

For the foregoing reasons, the Commission certifies that the proposed amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11, and new Rules 18a–5 through 18a–9, would not have a significant economic impact on any small entity for purposes of the RFA.

The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate the extent of the impact.

VII. Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996,[1443] a rule is considered ''major'' where, if adopted, it results or is likely to result in: (1) an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment, or innovation. The Commission requests comment on the potential impact of the proposed rule on the economy on an annual basis, any potential increase in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

VIII. Statutory Basis and Text of the Proposed Amendments and New Rules

The Commission is proposing to revise Rules 17a–3, 17a–4, 17a–5, and 17a–11 under the Exchange Act (17 CFR 240.17a–3, 17 CFR 240.17a–4, 17 CFR 240.17a–5, and 17 CFR 240.17a–11), proposing to revise Rule 18a–1 under the Exchange Act (17 CFR 240.18a–1) [as proposed at 77 FR 70214, Nov. 23, 2012], and proposing to add new Rules 18a–5, 18a–6, 18a–7, and 18a–8 under the Exchange Act (17 CFR 240.18a–5, 17 CFR 240.18a–6, 17 CFR 240.18a–7, and 17 CFR 240.18a–8), and FOCUS Report Form SBS (17 CFR 249.617) pursuant to the authority conferred by the Exchange Act, including sections 15F, 17, 23(a) and 36.[1444]

List of Subjects in 17 CFR Parts 240 and 249

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

For the reasons set out in the preamble, the Commission proposes to revise Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 240 is revised 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, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 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; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 2. Section 240.17a–3 is amended by:
■ a. Revising the heading;
■ b. Adding an undesignated introductory paragraph;
■ c. Revising paragraphs (a) introductory text, (a)(1), (a)(3), (a)(4)(vi), (a)(4)(vii), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12)(i) introductory text, (a)(12)(i)(A), (a)(12)(i)(E), (a)(12)(i)(F), (a)(12)(i)(G), (a)(12)(i)(H);
■ d. Removing the undesignated proviso paragraph at the end of paragraph (a)(12)(i);
■ e. Adding a note at the end of paragraph (a)(12)(i);
■ f. Revising paragraph (a)(12)(ii);
■ g. In paragraphs (a)(16)(ii)(A) and (B), removing the phrase ''shall mean'' and adding in its place ''means'';
■ h. In paragraphs (a)(17)(i)(A), (B), (C) and (D), (a)(18), (a)(19), (a)(20) and (a)(22), removing ''member,'' wherever it appears;
■ i. In paragraphs (a)(17)(i)(A) and (B)(*1*), (a)(18)(i), and (a)(19)(i), removing the word ''shall'' and adding in its place ''must'' wherever it appears;
■ j. In paragraphs (a)(17)(i)(C) and (D), removing the word ''shall'' and adding in its place ''will'' wherever it appears;
■ k. Adding paragraphs (a)(24), (a)(25), (a)(26), (a)(27), (a)(28), (a)(29), and (a)(30);
■ l. Revising paragraph (b);
■ m. Removing paragraphs (c) and (d);
■ n. Redesignating paragraphs (e), (f), (g), and (h) as (c), (d), (e), and (f), respectively; and

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[1441] *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 30743 (''The SEC continues to believe that 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 major banks—would not be 'small entities' for purposes of the RFA. Similarly, the SEC continues to believe that the types of entities that may have security-based swap positions above the level required to be a 'major security-based swap participant' would not be a 'small entity' for purposes of the RFA. Accordingly, the SEC certifies that the final rules defining 'security-based swap dealer' or 'major security-based swap participant' would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.'').

[1442] This estimate is based on the number of small broker-dealers as of December 31, 2012.

[1443] *See Contract with America Advancement Act of 1996,* Public Law 104–121, 110 Stat. 847 (1996) (codified in various sections of titles 5 and 15 of the U.S. Code, and as a note to 5 U.S.C. 601).

[1444] 15 U.S.C. 78o 10, 78q, 78w(a), and 78mm.

■ o. Revising newly redesignated paragraphs (c), (d), (e), (f)(2), (f)(3), and (f)(4).

The additions and revisions read as follows:

§ 240.17a–3 Records to be made by certain brokers and dealers.

Section 240.17a–3 applies to a broker or dealer registered under section 15(b) of the Act (15 U.S.C. 78o(b)), 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. 78o–8(b)). A security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act that is not also registered as a broker or dealer under section 15(b) of the Act is subject to the books and records requirements under § 240.18a–5.

(a) Every broker or dealer 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), 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 purchase or sale, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier.

(2) * * *

(3) Ledger accounts (or other records) itemizing separately as to each cash, margin, or security-based swap account of every customer and of such 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 termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier.

(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, and 240.17a–13 (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 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 unique counterparty identifier, whether it is a ''long'' or ''short'' 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 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 broker or dealer, or associated person thereof, must be so designated. The term *instruction* must include instructions between partners and employees of a broker or dealer. The term *time of entry* means the time when the 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 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 termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier. 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 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 that circumstance, the 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 broker or dealer entered pursuant to the exercise of discretionary authority by the 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 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 termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier. 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 broker or dealer.

(ii) With respect to a security-based swap, copies of the security-based swap trade acknowledgement and verification made in compliance with § 240.15Fi-1 [previously proposed at 76 FR 3859, Jan. 21, 2011].

(9) A record with respect to each cash, margin, and security-based swap account with such 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 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) In the case of a security-based swap account, a record of the unique counterparty identifier, the name and address of such counterparty, and the signature of each person authorized to transact business in the security-based swap account.

(10) A record of all puts, calls, spreads, straddles, and other options in which such broker or dealer has any direct or indirect interest or which such 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. The computation need not be made by any broker or dealer unconditionally exempt from § 240.15c3–1 by paragraph § 240.15c3–1(b)(1) or (b)(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 defined in paragraph (f)(4) of this section) of the broker or dealer, which questionnaire or application must be approved in writing by an authorized representative of the 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 broker or dealer;

* * * * *

(E) A record of any denial, suspension, expulsion, or revocation of membership or registration of any 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 broker or dealer 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, 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.

Note to paragraph (a)(12)(i). Provided, however, that if such associated person has been registered as a registered representative of such broker or dealer with, or the associated person's employment has been approved by a self-regulatory organization, 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.

(ii) A record listing every associated person of the broker or dealer which shows, for each associated person, every office of the 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 broker or dealer and the Central Registration Depository number, if any, and every internal identification number or code assigned to that person by the broker or dealer.

* * * * *

(24) A report of the results of the monthly liquidity stress test, a record of the assumptions underlying the liquidity stress test, and the liquidity funding plan required under § 240.15c3–1(f), if applicable.

(25) A record of the daily calculation of the amount of equity and, if applicable, the margin amount for each account of a counterparty required under § 240.18a–3(c) [previously proposed at 77 FR 70214, Nov. 23, 2012].

(26) A record of compliance with possession or control requirements under § 240.18a–4(b) [previously proposed at 77 FR 70214, Nov. 23, 2012].

(27) A record of the reserve computation required under § 240.18a–4(c) [previously proposed at 77 FR 70214, Nov. 23, 2012].

(28) A record of each security-based swap transaction that is not verified under § 240.15Fi-1 [previously proposed at 76 FR 3859, Jan. 21, 2011] within five business days of execution that includes, at a minimum, the unique transaction identifier and unique counterparty identifier.

(29) A record that demonstrates the broker or dealer has complied with the business conduct standards as required under § 240.15Fh-6 [previously proposed at 76 FR 42396, July 18, 2011].

(30) A record that demonstrates 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 [previously proposed at 76 FR 42396, July 18, 2011].

(b) 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 broker or dealer as are made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a–3 and 17a–4. Nothing herein contained 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 17a–4.

(c) 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.

(d) *Security futures products.* 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.

(e) Every broker or dealer must make and keep current, as to each office, the books and records described in paragraphs (a)(1), (a)(6), (a)(7), (a)(12), (a)(17), (a)(18)(i), (a)(19), (a)(20), (a)(21), and (a)(22) of this section.

(f) * * *

(1) * * *

(2) The term *principal* means any individual registered with a registered national securities association as a principal or branch manager of a broker or dealer or any other person who has been delegated supervisory responsibility over associated persons by the 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; the Commodities Futures Trading Commission and a prudential regulator to the extent the prudential regulator oversees security-based swap activities.

(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 3(a)(70) of the Act (15 U.S.C. 78c(a)(18) and (a)(70)) respectively, but will not include persons whose functions are solely clerical or ministerial.

* * * * *

■ 3. Section 240.17a–4 is amended by:

■ a. Revising the heading;

■ b. Adding an undesignated introductory paragraph;

■ c. Revising paragraphs (a), (b) introductory text, (b)(1), (b)(3), (b)(4), (b)(5), (b)(7), (b)(8) introductory text, (b)(8)(i), (b)(8)(v), (b)(8)(vi), (b)(8)(vii), (b)(8)(viii), and (b)(8)(xiii);

■ d. Adding paragraph (b)(8)(xvi);

■ e. Redesignating paragraph (b)(8)(xv) as paragraph (b)(8)(xvii);

■ f. Redesignating paragraph (b)(8)(xiv) as paragraph (b)(8)(xv);

■ g. Adding new paragraph (b)(8)(xiv);

■ h. Revising newly redesignated paragraph (b)(8)(xv);

■ i. In paragraph (b)(11), removing the word ''shall'' and adding in its place ''must'';

■ j. Adding paragraphs (b)(14), (b)(15), and (b)(16);

■ k. Revising paragraphs (c), (d), (e) introductory text, and (e)(1), (e)(2), (e)(3), and (e)(4);

■ l. In paragraphs (e)(6), (e)(7), and (e)(8), removing ''member,'' wherever it appears;

■ m. In the last sentence of paragraph (e)(8), removing the word ''shall'' and adding in its place ''must'';

■ n. In paragraph (f) introductory text, removing the word ''paragraph,'' and adding in its place ''section'';

■ o. In paragraphs (f)(2) introductory text, (f)(2)(i), (f)(2)(ii)(D), and (f)(3) introductory text, removing ''member, broker, or dealer'' and adding in its place ''broker or dealer'' wherever it appears;

■ p. In paragraph (f)(3)(ii), removing ''member, broker or dealer'' and adding in its place ''broker or dealer'';

■ q. In paragraphs (f)(3)(iv)(A), (f)(3)(v) introductory text, (f)(3)(v)(A), and (f)(3)(vi), removing ''member, broker, or dealer'' and adding in its place ''broker or dealer'' wherever it appears;

■ r. In paragraphs (f)(2) introductory text, (f)(3) introductory text, and (f)(3)(vii), removing the word ''shall'' and adding in its place ''must'';

■ s. In paragraph (f)(3)(iv)(B), removing ''each index.'' and adding in its place ''the index.'';

■ t. In paragraph (f)(3)(vi), removing the phrase ''the self-regulatory organizations'' and adding in its place ''any self-regulatory organization'';

■ u. Revising paragraphs (f)(3)(vii) and (g);

■ v. In paragraph (h), adding the phrase ''or any successor rule'' after the word ''Board''.

■ w. In paragraph (i), removing ''member,'' wherever it appears, in the first sentence removing the phrase ''such outside entity shall'' and adding in its place ''such outside entity must'', and in the last sentence removing the phrase ''Agreement with an outside entity shall'' and adding in its place ''Agreement with an outside entity will'';

■ x. In paragraph (j), removing ''member,'' wherever it appears, removing the phrase ''broker and dealer'' and adding in its place ''broker or dealer'', and removing the word ''shall'' and adding in its place ''must'';

■ y. In paragraph (k)(1), removing ''member,'' before ''broker or dealer'', and removing the word ''shall'' and adding in its place ''must'' wherever it appears;

■ z. In paragraph (k)(2), removing ''member,'';

■ aa. In paragraph (l) removing ''member,'' wherever it appears, and

removing the phrase § 240.17a–3(g) and adding in its place § 240.17a–3(e);

■ bb. Revising paragraph (m)(1) through (m)(4); and

■ cc. Adding paragraph (m)(5).

The additions and revisions read as follows:

§ 240.17a–4 Records to be preserved by certain brokers and dealers.

Section 240.17a–4 applies to a broker or dealer registered under section 15(b) of the Act (15 U.S.C. 78o(b)), 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. 78o–8(b)). A security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act that is not also registered as a broker or dealer under section 15(b) of the Act is subject to the record maintenance and preservation requirements under § 240.18a–6.

(a) Every broker or dealer subject to § 240.17a–3 must preserve for a period of not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to §§ 240.17a–3(a)(1), (a)(2), (a)(3), (a)(5), (a)(21), (a)(22), and analogous records created pursuant to § 240.17a–3(d).

(b) Every 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), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(16), (a)(18), (a)(19), (a)(20), (a)(24), (a)(25), (a)(26), (a)(27), (a)(28), (a)(29), and (a)(30), and analogous records created pursuant to § 240.17a–3(e).

(2) * * *

(3) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of such, broker or dealer, as such.

(4) Originals of all communications received and copies of all communications sent (and any approvals thereof) by the 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 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 business of such broker or dealer, as such.

(6) * * *

(7) All written agreements (or copies thereof) entered into by such 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 securities-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 audit date on Form X–17A–5 (§ 249.617 of this chapter) Part II, or Part IIA or Part IIB, or Form SBS (§ 249.617 of this chapter), as applicable, and in the annual financial statements required by § 240.17a–5(d) and § 240.17a–12(b):

(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;

* * * * *

(xiii) Detail relating to information for possession or control requirements under § 240.15c3–3 and reported on the schedule in Part II or IIA of Form X–17A–5, or Form SBS (§ 249.617 of this chapter), as applicable;

(xiv) Detail relating to information for possession or control requirements under § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012] and reported on Form SBS (§ 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, 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)(16); and

* * * * *

(14) A copy of information required to be reported under Regulation SBSR § 242.901 *et seq.* of this chapter;

(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 [as proposed at 76 FR 42396, July 18, 2011];

(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 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 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 (§ 249.617 of this chapter), all Forms SBSE–W (§ 249.617 of this chapter), all amendments to these forms, all licenses or other documentation showing the registration of the broker or dealer with any securities regulatory authority.

(e) Every 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 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.

* * * * *

(f) * * *

(3) * * *

(vii) For every 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 broker's or dealer's electronic storage media to any acceptable medium under this section, must file with the designated examining authority for the 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 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 broker or dealer to download information kept on the 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 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 broker or dealer pursuant to §§ 240.17a–3 and 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 broker or dealer. Such arrangements will provide specifically that in the event of a failure on the part of a 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 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.

* * * * *

(m) * * *

(1) The term *office* has the meaning set forth in § 240.17a–3(f)(1).

(2) The term *principal* has the meaning set forth in § 240.17a–3(f)(2).

(3) The term *securities regulatory authority* has the meaning set forth in § 240.17a–3(f)(3).

(4) The term *associated person* has the meaning set forth in § 240.17a–3(f)(4).

(5) The term *business as such* includes the business as a security-based swap dealer or major security-based swap participant with respect to a broker or dealer that is registered under section 15F of the Act (15 U.S.C. 78o–10) as a security-based swap dealer or major security-based swap participant.

■ 4. Section 240.17a–5 is amended by:

■ a. Revising the heading;

■ b. Adding an undesignated introductory paragraph;

■ c. Revising paragraph (a) introductory text and removing paragraph (a)(1);

■ d. Redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) as paragraphs (a)(1) (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6), respectively;

■ e. Revising newly redesignated paragraphs (a)(1) introductory text, (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv);

■ f. Adding paragraph (a)(1)(v);

■ g. In newly redesignated paragraphs (a)(2) and (a)(6), removing the word ''shall'' and adding in its place ''will'';

■ h. Revising newly redesignated paragraphs (a)(3), (a)(4), and (a)(5);

■ i. Revising paragraph (b)(1);

■ j. In paragraphs (b)(3), (b)(4), and (b)(5), removing the word ''shall'' and adding in its place ''will'' wherever it appears;

■ k. In paragraphs (c)(1) introductory text, (c)(2), (c)(2)(i), and (c)(2)(ii) removing the word ''shall'' and adding in its place ''must'' wherever it appears;

■ l. Revising paragraph (c)(3);

■ m. In paragraph (c)(4)(iii), removing the word ''shall'' and adding in its place ''must'' where it appears;

■ n. In paragraph (c)(5)(i)(C), adding ''(c)(2)'' before ''(iv)'';

■ o. In paragraph (c)(5)(iii)(C), removing the word ''Home'' and adding in its place ''home'' wherever it appears;

■ p. Revising paragraphs (d)(1)(i)(B)(*1),* (d)(1)(i)(B)(*2),* (d)(2)(i), (d)(2)(ii), (d)(2)(iii), (d)(3)(i)(A)(*4*), (d)(3)(i)(A)(*5*), (d)(3)(i)(C);

■ q. In paragraph (d)(3)(ii), adding the phrase ''§ 240.18a–4,'' after the phrase ''§ 240.17a–13,'';

■ r. Revising paragraphs (d)(3)(iii), (e)(1)(ii), (e)(2), and (e)(3);

■ s. Revising paragraphs (f)(2)(ii)(E) and (f)(2)(ii)(F);

■ t. In the fifth sentence of paragraph (f)(3)(v)(B), adding the word ''the'' before the phrase ''independent public accountant does not agree'';

■ u. Revising paragraphs (g)(2)(i), (g)(2)(ii), (h), and note to paragraph (h);

■ v. Revising paragraphs (i)(3)(iii)(A) and (i)(3)(iii)(B), and (i)(4);

■ w. Removing and reserving paragraph (j);

■ x. In paragraph (k) introductory text, removing the word ''shall'' and adding in its place ''must'' wherever it appears, and removing the phrase ''Market Regulation'', and adding tin its place ''Trading and Markets'';

■ y. In paragraph (l), removing the phrase ''Securities Exchange Act of 1934'', and adding in its place ''Act,'' and removing the word ''shall'' and adding in its place ''must'';

■ z. In paragraph (m)(1), removing the word ''shall'' and adding in its place ''must'';

■ aa. 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)'' and ''(15 U.S.C. 78c)'', respectively;

■ bb. In paragraph (m)(4), removing the phrase ''shall'' and adding in its place ''will'';

■ cc. In paragraph (n)(2), removing the word ''shall'' and adding in its place ''must''; and

■ dd. Revising paragraph (o).

The additions and revisions read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

Section 240.17a–5 applies to a broker or dealer registered under section 15(b) of the Act (15 U.S.C. 78o(b)), 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. 78o–8(b)). A security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act that is not also registered as a broker or dealer under section 15(b) of the Act is subject to the reporting requirements under § 240.18a–7.

(a) *Monthly and Quarterly Reports.*

(1) Filing of Reports

(i) * * *

(ii) Every broker or dealer subject to this paragraph (a) who clears transactions or 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 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) 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 Form SBS (§ 249.617 of this chapter) within 17 business days after the end of each month.

(v) 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), or an executed Form SBS (§ 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) or Form SBS (§ 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) or Form SBS (§ 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), or Form SBS (§ 249.617 of this chapter) as required in paragraph (a)(2) of this section.

(5) Each broker or dealer that computes certain of its capital charges in accordance with § 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 (b)(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 VaR 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;

(vii) The results of the liquidity stress test required by § 240.15c3–1(f) within 17 business days after the end of the month;

(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) or Form SBS (§ 249.617 of this chapter) as determined by the standards set forth in paragraphs (a)(1) (ii), (iii), and (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 from the date of the audited statements required to be furnished by paragraphs (c)(1) and (c)(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 (c)(2)(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 § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], 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 § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], 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 Form X–17A–5 (§ 249.617 of this chapter) Part II, Part IIA or Form SBS (§ 249.617 of this chapter), as applicable. If the Statement of Financial Condition filed in accordance with instructions to Form X–17A–5, Part II, Part IIA, or Form SBS, 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, Part IIA, or Form SBS Statement of Financial Condition 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), or Form SBS (§ 249.617 of this chapter), as applicable, including a Computation of Net Capital under § 240.15c3–1, a Computation for Determination of the Reserve Requirements under Exhibit A of § 240.15c3–3, and, if applicable, under Exhibit A of § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], and Information Relating to the Possession or Control Requirements under § 240.15c3–3, and, if applicable, under § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012].

(iii) If either the Computation of Net Capital under § 240.15c3–1 or the Computation for Determination of the Reserve Requirements Under Exhibit A of § 240.15c3–3, or, if applicable Exhibit A of § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012] 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) or Form SBS (§ 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 or Form SBS (§ 249.617 of this chapter), 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, 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012] 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, 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012] was derived from the books and records of the broker or dealer.

* * * * *

(C) If applicable, a description of an instance of non-compliance with §§ 240.15c3–1, 240.15c3–3(e) or, if applicable, 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012] 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 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012] 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), § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], except for paragraph (c), § 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, § 240.17a–13, § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], or any Account Statement Rule.

* * * * *

(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 each of the confidential and non-confidential portions of the annual reports separately bound under paragraph (e)(3) of this section a complete and executed Part III of Form X–17A–5 (§ 249.617 of this chapter). The oath or affirmation made in Part III of Form X–17A–5 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 Form X–17A–5 (§ 249.617 of this chapter), Part II, Part IIA or Form SBS (§ 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 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.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(E) A representation that the independent public accountant has undertaken the items enumerated in paragraphs (g)(1) and (2) of this section.

(F) Except as provided in paragraph (f)(2)(iii) of this section, a representation that the broker or dealer agrees to allow representatives of the Commission or its designated examining authority, if requested in writing for purposes of an examination of the broker or dealer, to review the audit documentation associated with the reports of the independent public accountant filed under paragraph (d)(1)(i)(C) of this section. For purposes of this paragraph, ''audit documentation'' has the meaning provided in standards of the Public Company Accounting Oversight Board. The Commission anticipates that, if requested, it will accord confidential treatment to all documents it may obtain from an independent public accountant under this paragraph to the extent permitted by law.

* * * * *

(g) * * *

(2)(i) To prepare an independent public accountant's report based on an examination of the statements required under paragraphs (d)(3)(i)(A)(*2*) through (*5*) of this section in the compliance report required to be filed by the broker or dealer under paragraph (d)(1)(i)(B)(*1*) of this section in accordance with 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 (d)(4)(i) through (iii) of this section in the exemption report required to be filed by the broker or dealer under paragraph (d)(1)(i)(B)(*2*) of this section, in accordance with standards of the Public Company Accounting Oversight Board.

(h) Notification of non-compliance or material weakness. If, during the course of preparing the independent public accountant's reports required under paragraph (d)(1)(i)(C) of this section, the independent public accountant determines that the broker or dealer is not in compliance with § 240.15c3–1, § 240.15c3–3, § 240.17a–13, or § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012] or any rule of the designated examining authority of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer, as applicable, or the independent public accountant determines that any material weaknesses (as defined in paragraph (d)(3)(iii) of this section) exist, the independent public accountant must immediately notify the chief financial officer of the broker or 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 broker or dealer to provide a notification under § 240.15c3–1, § 240.15c3–3, or § 240.17a–11, or if the notice concerns a material weakness, the broker or dealer must provide a notification in accordance with § 240.15c3–1, § 240.15c3–3, or § 240.17a–11, 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 and the designated examining authority within one business day. The report from the accountant must, if the broker or dealer failed to file a notification, describe any instances of non-compliance that required a notification under §§ 240.15c3–1, 240.15c3–3, or 240.17a–11, or any material weaknesses. If the broker or dealer filed a notification, the report from the accountant must detail the aspects of the notification of the broker or dealer with which the accountant does not agree.

Note 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 shall fail to make a reserve bank account or special 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.

* * * * *

(i) * * *

(3) * * *

(iii)(A) The opinion of the independent public accountant with respect to the statements required under paragraphs (d)(3)(i)(A)(*2*) through (*5*) of this section in the compliance report required under paragraph (d)(1)(i)(B)(*1*) of this section; or

(B) The conclusion of the independent public accountant with respect to the statements required under paragraphs (d)(4)(i) through (iii) of this section in the exemption report required under paragraph (d)(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 (d) of this section must be given.

* * * * *

(j) [Reserved].

* * * * *

(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.

* * * * *

■ 5. Section 240.17a–11 is amended by:

■ a. Revising the heading;

■ b. Adding an undesignated introductory paragraph;

■ c. Removing paragraph (a);

■ d. Redesignating paragraphs (b), (c), (d), (e), (f), (g), (h), and (i) as paragraphs (a), (b), (c), (d), (g), (h), (i), and (j), respectively;

■ e. Revising newly redesignated paragraphs (a)(1), (a)(2), and paragraph (b) introductory text;

■ f. Adding paragraph (b)(6);

■ g. Revising newly redesignated paragraphs (c) and (d);

■ h. Adding paragraphs (e) and (f); and

■ i. Revising newly redesignated paragraphs (g), (h), (i), and (j).

The revisions and additions read as follows:

§ 240.17a–11 Notification provisions for brokers and dealers.

Section 240.17a–11 applies to a broker or dealer registered under section 15(b) of the Act (15 U.S.C. 78o(b)), 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. 78o-8(b)). A security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act that is not also registered as a broker or dealer under section 15(b) of the Act is subject to the notification requirements under § 240.18a–8.

(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 dealer's 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 paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section in accordance with paragraph (h) of this section:

* * * * *

(6) If the broker or dealer is registered as a major security-based swap participant and the level of tangible net worth of the broker or dealer falls below $20 million.

(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) A broker or dealer that has been authorized by the Commission to compute net capital pursuant to § 240.15c3–1e must give immediate notice in writing in accordance with paragraph (h) of this section if a liquidity stress test conducted pursuant to § 240.15c3–1(f) indicates that the amount of liquidity reserve is insufficient.

(f) If a broker-dealer registered with the Commission as a security-based swap dealer under section 15F(b) of the Act (15 U.S.C. 78o–10(b)) fails to make in its special account for the exclusive benefit of security-based swap customers a deposit, as required by § 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012], 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, the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the designated examining authority of which such broker or dealer is a member, and the Commodity Futures Trading Commission if the broker or dealer is registered as a futures commission merchant with such Commission. For the purposes of this section, ''notice'' must be given or transmitted by facsimile transmission. The report required by paragraphs (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)).

* * * * *

■ 6. Section 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012] is revised by adding paragraph (c)(1)(x) to read as follows:

§ 240.18a–1 Net capital requirements for security-based swap dealers for which there is not a prudential regulator.

* * * * *

(c) * * *

(1) * * *

(x)(A) Deducting the market value of all short securities differences (which shall include securities positions reflected on the securities record which are not susceptible to either count or confirmation) unresolved after discovery in accordance with the following schedule:

Differences[1]	Number of business days after discovery
25 percent	7
50 percent	14
75 percent	21
100 percent	28

[1] Percentage of market value of short securities differences.

(B) Deducting the market value of any long securities differences, where such securities have been sold by the broker or dealer before they are adequately resolved, less any reserves established therefor;

(C) The designated examining authority for a broker or dealer may extend the periods in (x)(A) of this section for up to 10 business days if it finds that exceptional circumstances warrant an extension.

* * * * *

■ 7. Sections 240.18a–5 through 240.18a–9 are added to read as follows:

§ 240.18a–5 Records to be made by certain security-based swap dealers and major security-based swap participants.

Section 240.18a–5 applies to a security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act (15 U.S.C. 78o–8(b)) that is not also registered as a broker or dealer under section 15(b) of the Act (15 U.S.C. 78o(b)). A broker or dealer registered under section 15(b) of the Act, including a broker or dealer registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act, is subject to the books and records requirements under § 240.17a–3.

(a) This paragraph applies only to security-based swap dealers and major security-based swap participants registered under section 15F of the Act (15 U.S.C. 78o–10) for which there is no prudential regulator. Each such security-based swap dealer and major security-based swap participant subject to this paragraph must make and keep 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, the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered. For security-based swaps, such records must also show, for each purchase or sale, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier.

(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 and commodities for such account and all other debits and credits to such account, and in addition, in the case of security-based swaps, ledger accounts (or other records) itemizing separately, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier.

(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 subject of repurchase or

reverse repurchase agreements) carried by such security-based swap dealer or major security-based swap participant for its account or the account of its customers and showing the locations 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 unique counterparty identifier, whether it is a ''long'' or ''short'' 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 termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier. 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 acknowledgement and verification made in compliance with § 240.15Fi-1 [as proposed at 76 FR 3859, Jan. 21, 2011].

(7) For each security-based swap account, a record of the unique counterparty identifier, the name and address of such counterparty, and the signature of each person authorized 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 [as proposed at 77 FR 70214, Nov. 23, 2012], 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 (c) of this section) of the security-based swap dealer or major security-based swap participant 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, 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) A report of the results of the monthly liquidity stress test, a record of the assumptions underlying the liquidity stress test, and the liquidity funding plan required under § 240.18a–1(f) [as proposed at 77 FR 70214, Nov. 23, 2012], if applicable.

(12) A record of the daily calculation of the amount of equity and, if applicable, the margin amount for each account of a counterparty required under § 240.18a–3(c) [as proposed at 77 FR 70214, Nov. 23, 2012].

(13) A record of compliance with possession or control requirements under § 240.18a–4(b) [as proposed at 77 FR 70214, Nov. 23, 2012].

(14) A record of the reserve computation required under § 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012].

(15) A record of each security-based swap transaction that is not verified under § 240.15Fi–1 [as proposed at 76 FR 3859, Jan. 21, 2011] within five business days of execution that includes, at a minimum, the unique transaction identifier and unique counterparty identifier.

(16) A record that demonstrates the security-based swap dealer or major security-based swap participant has complied with the business conduct standards as required under § 240.15Fh–6 [as proposed at 76 FR 42396, July 18, 2011].

(17) A record that demonstrates 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 [as proposed at 76 FR 42396, July 18, 2011].

(b) This paragraph applies only to security-based swap dealers and major security-based swap participants registered under section 15F of the Act (15 U.S.C. 78o–10) for which there is a prudential regulator. Each security-based swap dealer and major security-based swap participant subject to this paragraph must make and keep the following books and records:

(1) For security-based swaps and any other positions related to the firm's business as a security-based swap dealer or a major security-based swap participant, 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 (includes the contract price for security-based swaps), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered. For security-based swaps, such records must also show, for each purchase and sale, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier.

(2) Ledger accounts (or other records) itemizing separately as to each account for every security-based swap customer or non-customer and of such security-based swap dealer or major security-based swap participant, all purchases, sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such account, and in addition, for security-based swaps, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier.

(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 unique counterparty identifier, whether it is a ''long'' or ''short'' 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 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 termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier. An order entered pursuant to the exercise of discretionary authority must be so designated.

(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 termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier. 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 acknowledgement and verification made in compliance with § 240.15Fi–1 [as proposed at 76 FR 3859, Jan. 21, 2011].

(7) For each security-based swap account, a record of the unique counterparty identifier, the name and address of such counterparty, and the signature of each person authorized 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 whose activities relate to the business of the security-based swap dealer or major security-based swap participant, 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, 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) [as proposed at 77 FR 70214, Nov. 23, 2012].

(10) A record of the reserve computation required under § 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012].

(11) A record of each security-based swap transaction that is not verified under § 240.15Fi–1 [as proposed at 76 FR 3859, Jan. 21, 2011] within five business days of execution that includes, at a minimum, the unique transaction identifier and unique counterparty identifier.

(12) A record that demonstrates the security-based swap dealer or major security-based swap participant has complied with the business conduct standards as required under § 240.15Fh–6 [as proposed at 76 FR 42396, July 18, 2011].

(13) A record that demonstrates 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 [as proposed at 76 FR 42396, July 18, 2011].

(c)(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 defined under section 3(a)(70) of the Act.

(2) The term, as to a person 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.

§ 240.18a–6 Records to be preserved by certain security-based swap dealers and major security-based swap participants.

Section 240.18a–6 applies to a security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act (15 U.S.C. 78o–10(b)) that is not also registered as a broker or dealer under section 15(b) of the Act (15 U.S.C. 78o(b)). A broker or dealer registered under section 15(b) of the Act, including a broker or dealer registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act, is subject to the record maintenance and preservation requirements under § 240.17a–4.

(a)(1) Every security-based swap dealer or major security-based swap participant subject to § 240.18a–5(a) 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 paragraphs § 240.18a–5(a)(1), (a)(2), (a)(3), and (a)(4).

(2) Every security-based swap dealer or major security-based swap participant subject to § 240.18a–5(b) 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 paragraphs § 240.18a–5(b)(1), (b)(2), and (b)(3).

(b)(1) Every security-based swap dealer and major security-based swap participant subject to § 240.18a–5(a) 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), (a)(6), (a)(7), (a)(8), (a)(9), (a)(11), (a)(12), (a)(13), (a)(14), (a)(15), (a)(16), and (a)(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 securities-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 Form SBS (§ 249.617 of this chapter) and in annual audited 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 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 for Net Capital;

(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 [as proposed at 77 FR 70214, Nov. 23, 2012];

(L) Detail relating to information for possession or control requirements under § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012] and reported on Form SBS (§ 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 [as proposed at 77 FR 70214, Nov. 23, 2012], 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) [as proposed at 77 FR 70214, Nov. 23, 2012]; 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*) [as proposed at 77 FR 70214, Nov. 23, 2012];

(xi) A copy of information required to be reported under Regulation SBSR § 242.901 *et seq.* of this chapter;

(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 [as proposed at 76 FR 42396, July 18, 2011];

(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, 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)).

(2) Every security-based swap dealer and major security-based swap participant subject to § 240.18a–5(b) 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), (b)(5), (b)(6), (b)(7), (b)(9), (b)(10), (b)(11), (b)(12), and (b)(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 dealer. 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 securities-based swaps must be maintained with the customer's or non-customer's account records.

(v) Records which contain detail relating to information for possession or control requirements under § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012] and reported on Form SBS (§ 249.617 of this chapter) that is in support of amounts included in the report prepared as of the audit date on Form SBS (§ 249.617 of this chapter) and in annual audited financial statements required by § 240.18a–7(d).

(vi) A copy of information required to be reported under Regulation SBSR § 242.901 *et seq.* 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 [as proposed at 76 FR 42396, July 18, 2011]; and

(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, 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)).

(c) Every security-based swap dealer and major security-based swap participant subject to § 240.18a–5(a)

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 corporation or partnerships), all Forms SBSE (§ 249.617 of this chapter), Forms SBSE–A, Forms SBSE–W (§ 249.617 of this chapter), all amendments to these forms, 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.

(d) Every security-based swap dealer and major security-based swap participant subject to § 240.18a–5 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 regulatory authority 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 regulatory authority 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 regulatory authority 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 regulatory authority 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 ''electronic storage media'' (as defined in this section) that meet the conditions set forth in this paragraph and be maintained and preserved for the required time in that form.

(1) For purposes of this section, the term *electronic storage media* means any digital storage medium or system that meets the applicable conditions set forth in this paragraph (e).

(2) If electronic storage media is used by a security-based swap dealer or major security-based swap participant, it must comply with the following requirements:

(i) If employing any electronic storage media other than optical disk technology (including CD–ROM), the security-based swap dealer or major security-based swap participant must notify the Commission at least 90 days prior to employing such storage media. The security-based swap dealer or major security-based swap participant must provide its own representation or one from the storage medium vendor or other third party with appropriate expertise that the selected storage media meets the conditions set forth in this paragraph (e)(2).

(ii) The electronic storage media must:

(A) Preserve the records exclusively in a non-rewritable, non-erasable format;

(B) Verify automatically the quality and accuracy of the storage media recording process;

(C) Serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and

(D) Have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under this paragraph (e) as required by the Commission.

(3) If a security-based swap dealer or major security-based swap participant uses electronic storage media, it must:

(i) At all times have available, for examination by the staff of the Commission, facilities for immediate, easily readable projection or productions of electronic storage media images and for producing easily readable images;

(ii) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the staff of the Commission may request;

(iii) Store separately from the original, a duplicate copy of the record stored on any medium acceptable under § 240.18a–6 for the time required; and

(iv) Organize and index accurately all information maintained on both original and any duplicate storage media.

(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) The security-based swap dealer or major security-based swap participant must 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 electronic storage media 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 on the electronic storage media; or place in escrow and keep current a

copy of the physical and logical file format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with the appropriate documentation and information necessary to access records and indexes.

(vii) For every security-based swap dealer or major security-based swap participant 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 security-based swap dealer's or major security-based swap participant's electronic storage media to any acceptable medium under this section, must file with the Commission 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, upon reasonable request, such information as is deemed necessary by the staff of the Commission, to download information kept on the security-based swap dealer's or major security-based swap participant's electronic storage media to any medium acceptable under § 240.18a–6 under the Act.

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the security-based swap dealer's or major security-based swap participant's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained and preserved pursuant to §§ 240.18a–5 and 240.18a–6 under the Act in a format acceptable to the staff of the Commission. Such arrangements will provide specifically that in the event of a failure on the part of a security-based swap dealer or major security-based swap participant to download the record into a readable format and after reasonable notice to the security-based swap dealer or major security-based swap participant, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, as the staff of the Commission may request.

(f) 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 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 copy of any or all or any part of such books and records.

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 (15 U.S.C. 78o–10), which 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; the Commodities Futures Trading Commission and a prudential regulator to the extent the prudential regulator oversees security-based swap activities.

(2) The term *associated person* has the meaning set forth in § 240.18a–5(c).

§ 240.18a–7 Reports to be made by certain security-based swap dealers and major security-based swap participants.

Section 240.18a–7 applies to a security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act (15 U.S.C. 78o–8(b)) that is not also registered as a broker or dealer under section 15(b) of the Act (15 U.S.C. 78o(b)). A broker or dealer registered under section 15(b) of the Act, including a broker or dealer registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act, is subject to the reporting requirements under § 240.17a–5.

(a)(1) Every security-based swap dealer or major security-based swap participant for which there is no prudential regulator must file an executed Form SBS with the Commission or its designee 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 an executed Form SBS with the Commission or its designee within 17 business 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) [as proposed at 77 FR 70214, Nov. 23, 2012], must file the following:

(i) For each product for which the security-based swap dealer calculates a deduction for market risk other than in accordance with a model approved pursuant to §§ 240.18a–1(e)(1)(i) and (iii) [as proposed at 77 FR 70214, Nov. 23, 2012], 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 within 17 business days after the end of the month;

(vii) The results of the liquidity stress test required by § 240.18a–1(f) [as proposed at 77 FR 70214, Nov. 23, 2012] within 17 business days after the end of the month;

(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 Web site 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 [as proposed at 77 FR 70214, Nov. 23, 2012]. Such statement must include summary financial statements of subsidiaries consolidated pursuant to Appendix C of § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012], 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) 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 Web site 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)(i) Except as otherwise provided in paragraph (c)(1)(iii) of this section, every security-based swap dealer or major security-based swap participant for which there is no prudential regulator registered under section 15F of the Act (15 U.S.C. 78o–10) must file annually, as applicable:

(A) A financial report as described in paragraph (c)(2) of this section;

(B) For a security-based swap dealer, a compliance report as described in paragraph (c)(3) 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 should 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 is not required to 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 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 Form SBS (§ 249.617 of this chapter).

(ii) Supporting schedules that include, from Form SBS (§ 249.617 of this chapter), including a Computation of Net Capital under § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012], the Computation for Determination of Tangible Net Worth under § 240.18a–2 [as proposed at 77 FR 70214, Nov. 23, 2012], a Computation for Determination of the Reserve Requirements under Exhibit A of § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], and Information Relating to the Possession or Control Requirements Under § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], as applicable.

(iii) If either the Computation of Net Capital under § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012], the Computation for Determination of Tangible Net Worth under § 240.18a–2 [as proposed at 77 FR 70214, Nov. 23, 2012] or the Computation for Determination of the Reserve Requirements under § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012] in the financial report is materially different from the corresponding computation in the most recent Form SBS (§ 249.617 of this chapter) 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.

(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 proposed at 77 FR 70214, Nov. 23, 2012];

(*5*) The information used to assert compliance with §§ 240.18a–1 and 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012] was derived from the books and records of the security-based swap dealer; and

(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 [as proposed at 77 FR 70214, Nov. 23, 2012] 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) [as proposed at 77 FR 70214, Nov. 23, 2012], or 240.18a–9 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) [as proposed at 77 FR 70214, Nov. 23, 2012] will not be prevented, or detected on a timely basis or that non-compliance to a material extent with § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], except for paragraph (c), or § 240.18a–9 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 [as proposed at 77 FR 70214, Nov. 23, 2012], or § 240.18a–9.

(4) The annual reports must be filed not more than 60 calendar days after the end of the fiscal year of the security-based swap dealer or major security-based swap participant.

(5) The annual reports must be filed 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.

(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) 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 (e)(2) of this section a complete and executed Part III of Form X–17A–5 (§ 249.617 of this chapter). The oath or affirmation made in Part III of Form X–17A–5 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 Form SBS (§ 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, 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 (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)(1) *Qualifications of independent public accountant.* The independent public accountant must be qualified and independent in accordance with § 210.2–01 of this chapter. In addition, the accountant must be registered with the Public Company Accounting Oversight Board.

(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 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. Such 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 which 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 standards of the Public Company Accounting Oversight Board; and

(2) 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) of this section in accordance with 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 [as proposed at 77 FR 70214, Nov. 23, 2012], or § 240.18a–9, 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 [as proposed at 77 FR 70214, Nov. 23, 2012], 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 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 proposed at 77 FR 70214, Nov. 23, 2012], 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 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; and

(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) 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) 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) *Extensions and exemptions*—on written request of a security-based swap dealer or major security-based swap participant to the Commission or on its own motion, the Commission may grant an extension of time or an exemption from any of the requirements of this section either unconditionally or on specified terms and conditions.

(j) *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.

(k) *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.

§ 240.18a–8 Notification provisions for security-based swap dealers and major security-based swap participants.

Section 240.18a–8 applies to a security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act (15 U.S.C. 78o–8(b)) that is not also registered as a broker or dealer under section 15(b) of the Act (15 U.S.C. 78o(b)). A broker or dealer registered under section 15(b) of the Act (15 U.S.C. 78o(b)), including a broker or dealer registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act (15 U.S.C. 78o–10(b)), is subject to the notification requirements under § 240.17a–11.

(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 [as proposed at 77 FR 70214, Nov. 23, 2012] must give notice 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 [as proposed at 77 FR 70214, Nov. 23, 2012] 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 [as proposed at 77 FR 70214, Nov. 23, 2012], 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 [as proposed at 77 FR 70214, Nov. 23, 2012] must give notice 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, as appropriate. If a security-based swap is informed by the Commission that it is, or has been, in violation of § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012] 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 [as proposed at 77 FR 70214, Nov. 23, 2012], 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 [as proposed at 77 FR 70214, Nov. 23, 2012] must give notice 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 [as proposed at 77 FR 70214, Nov. 23, 2012] 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 [as proposed at 77 FR 70214, Nov. 23, 2012], 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), (b)(2), (b)(3), or (b)(4) of this section, as applicable, in accordance with paragraph (i) of this section:

(1) If a computation made by a security-based swap dealer pursuant to § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012] 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) [as proposed at 77 FR 70214, Nov. 23, 2012] 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;

(4) The occurrence of the fourth and each subsequent backtesting exception under § 240.18a–1(d)(9) [as proposed at 77 FR 70214, Nov. 23, 2012] 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 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) A security-based swap dealer that has been authorized by the Commission to compute net capital pursuant to § 240.18a–1(d) [as proposed at 77 FR 70214, Nov. 23, 2012] must give immediate notice in writing in accordance with paragraph (h) of this section if a liquidity stress test conducted pursuant to § 240.18a–1(f) [as proposed at 77 FR 70214, Nov. 23, 2012] indicates that the amount of liquidity reserve is insufficient.

(g) If a security-based swap dealer fails to make in its special account for the exclusive benefit of security-based swap customers a deposit, as required by § 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012], 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, 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 Commodity Futures Trading Commission if the security-based swap dealer or major security-based swap participant is registered as a futures commission merchant with such Commission. For the purposes of this section, ''notice'' must be given or transmitted by facsimile transmission. The report required by paragraphs (d) or (e)(2) of this section may be transmitted by overnight delivery.

§ 240.18a–9 Quarterly security counts to be made by certain security-based swap dealers.

Section 240.18a–9 applies to a security-based swap dealer registered under 15F(b) of the Act (15 U.S.C. 78o–8(b)) that is not also registered as a broker or dealer under section 15(b) of the Act (15 U.S.C. 78o(b)); *provided, however,* that this § 240.18a–9 does not apply to a security-based swap dealer that has a prudential regulator. A broker or dealer registered under section 15(b) of the Act, including a broker or dealer registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act, is subject to the securities count requirements under § 240.17a–13.

(a) Any security-based swap dealer that is subject to the provisions of this rule 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 hereunder.

(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 rule 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.

(d) The Commission may, upon written request, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any security-based swap dealer that satisfies the Commission that it is not necessary in the public interest and for the protection of investors to subject the particular security-based swap dealer to certain or all of the provisions of this section, because of the special nature of its business, the safeguards it has established for the protection of customers' funds and securities, or such other reason as the Commission deems appropriate.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 8. 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.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 9. 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

* * * * *

■ 10. Section 249.617 is revised to read as follows:

§ 249.617 Form X–17A–5 and FOCUS Report Form SBS, 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 and § 240.17a–11, § 240.17a–12, and § 240.18a–7 of this chapter, as applicable.

Appropriate parts of Form X–17A–5 and FOCUS Report Form SBS, 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, and § 240.17a–11, § 240.17a–12, and § 240.18a–7 of this chapter, as applicable.

* * * * *

■ 11. 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.

BILLING CODE 8011–01–P

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL	
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Estimated average burden hours per response:	

SEC FILE NUMBER

AUDITED ANNUAL REPORT
FORM X-17A-5
PART III

FACING PAGE

Information Required Pursuant to Rules 17a-5, 17a-12, and 18a-7 under the Securities Exchange Act of 1934

REPORT 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): ☐ OTC derivatives dealer
☐ Broker-dealer ☐ Security-based swap dealer ☐ Major security-based swap participant

ADDRESS OF PRINCIPAL PLACE OF BUSINESS: (Do not use P.O. box no.)

_____
(No. and Street)

_____
(City) (State) (Zip Code)

NAME AND TELEPHONE NUMBER OF PERSON TO CONTACT WITH REGARD TO THIS REPORT

_____
(Name) (Area Code – Telephone Number) (Email Address)

B. ACCOUNTANT IDENTIFICATION

PCAOB-REGISTERED INDEPENDENT PUBLIC ACCOUNTANT whose opinion is contained in this report*

_____
(Name – if individual, state last, first, and middle name)

_____
(Address) (City) (State) (Zip Code)

_____
(Date of Registration with PCAOB)

FOR OFFICIAL USE ONLY

* 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. 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 information contained in the audited annual report pertaining to the firm of _____, as of _____, 20____, is true and correct. I further swear (or affirm) that neither the company nor any partner, proprietor, principal officer, or director has any proprietary interest in any account classified solely as that of a customer, except as follows: _____

_____

Signature: _____

Title: _____

_____

Notary Public

This report contains (check all applicable boxes):**

- ☐ (a) Facing page.
- ☐ (b) Statement of financial condition.
- ☐ (c) Statement of income (loss).
- ☐ (d) Statement of cash flows.
- ☐ (e) Statement of changes in stockholders' equity or partners' or sole proprietor's capital.
- ☐ (f) Statement of changes in liabilities subordinated to claims of creditors.
- ☐ (g) Computation of net capital under 17 C.F.R. § 240.15c3-1.
- ☐ (h) Computation of net capital under 17 C.F.R. § 240.18a-1.
- ☐ (i) Computation of tangible net worth under 17 C.F.R. § 240.18a-2.
- ☐ (j) Computation for determination of reserve requirements pursuant to Exhibit A to 17 C.F.R. § 240.15c3-3.
- ☐ (k) Computation for determination of reserve requirements pursuant to Exhibit A to 17 C.F.R. § 240.18a-4.
- ☐ (l) Information relating to possession or control requirements under 17 C.F.R. § 240.15c3-3.
- ☐ (m) Information relating to possession or control requirements under 17 C.F.R. § 240.18a-4.
- ☐ (n) A reconciliation, including appropriate explanation of the computation of net capital under 17 C.F.R. § 240.15c3-1.
- ☐ (o) A reconciliation, including appropriate explanation of the computation of the reserve requirements under 17 C.F.R. § 240.15c3-3.
- ☐ (p) A reconciliation, including appropriate explanation of the computation of net capital under 17 C.F.R. § 240.18a-1.
- ☐ (q) A reconciliation, including appropriate explanation of the computation of tangible net worth under 17 C.F.R. § 240.18a-2.
- ☐ (r) A reconciliation, including appropriate explanation of the computation of reserve requirements under 17 C.F.R. § 240.18a-4.
- ☐ (s) A reconciliation between the audited and unaudited Statements of Financial Condition with respect to methods of consolidation.
- ☐ (t) An oath or affirmation.
- ☐ (u) A copy of the SIPC Supplemental Report.
- ☐ (v) A report describing any material inadequacies found to exist or found to have existed since the date of the previous audit under 17 C.F.R. § 240.17a-12(k).
- ☐ (w) Exemption report in accordance with 17 C.F.R. § 240.17a-5.
- ☐ (x) Compliance report in accordance with 17 C.F.R. § 240.17a-5.
- ☐ (y) Compliance report in accordance with 17 C.F.R. § 240.18a-7.
- ☐ (z) Independent public accountant's report based on an examination of the financial report under 17 C.F.R. § 240.17a-5.
- ☐ (aa) Independent public accountant's report based on an examination of the financial statements under 17 C.F.R. § 240.17a-12.
- ☐ (bb) Independent public accountant's report based on an examination of the compliance report under 17 C.F.R. § 240.17a-5.
- ☐ (cc) Independent public accountant's report based on a review of the exemption report under 17 C.F.R. § 240.17a-5.
- ☐ (dd) Independent public accountant's report based on an examination of the financial report under 17 C.F.R. § 240.18a-7.
- ☐ (ee) Independent public accountant's report based on an examination of the compliance report under 17 C.F.R. § 240.18a-7.
- ☐ (ff) Other: _____

***To request confidential treatment of certain portions of this filing, see 17 C.F.R. § 240.17a-5(e)(3) or 17 C.F.R. § 240.18a-7(d)(2), as applicable.*

12. FOCUS Report Form SBS and the instructions thereto (referenced in § 249.617 of this chapter) are added to read as follows:

Note: The text of FOCUS Report Form SBS and the instructions thereto will not appear in the Code of Federal Regulations.

FOCUS Report FORM SBS Cover Page	UNITED STATES SECURITIES AND EXCHANGE COMMISION FOCUS REPORT (FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT) FORM SBS (Please read instructions before preparing Form)	OMB APPROVAL OMB Number: Expires: Estimated average burden hours per response:

This report is being filed by an:

1) SBSD without a prudential regulator and not registered as a broker-dealer (stand-alone SBSD) ☐ 999
2) MSBSP without a prudential regulator and not registered as a broker-dealer (stand-alone MSBSP) ☐ 999
3) SBSD without a prudential regulator and registered as a broker-dealer (broker-dealer SBSD) ☐ 999
4) MSBSP without a prudential regulator and registered as a broker-dealer (broker-dealer MSBSP) ☐ 999
5) SBSD with a prudential regulator (bank SBSD) ☐ 999
6) MSBSP with a prudential regulator (bank MSBSP) ☐ 999

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 _____ 13

SEC FILE NO. _____ 14

ADDRESS OF PRINCIPAL PLACE OF BUSINESS (Do not use P.O. Box No.) _____ 20
(No. and Street)

FIRM ID NO. _____ 15

FOR PERIOD BEGINNING (MM/DD/YY) _____ 24

_____ 21 (City) _____ 22 (State/Province) _____ 23 (Zip Code)

AND ENDING (MM/DD/YY) _____ 25

_____ 99
(Country)

NAME OF PERSON TO CONTACT IN REGARD TO THIS REPORT _____ 30

EMAIL ADDRESS _____ 31

(AREA CODE) TELEPHONE NO. _____ 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 _____, 20_____.

Signatures of:	Names of:
1) _____ Principal Executive Officer or Comparable Officer	_____ 99 Principal Executive Officer or Comparable Officer
2) _____ Principal Financial Officer or Comparable Officer	_____ 99 Principal Executive Officer or Comparable Officer
3) _____ Principal Operations Officer or Comparable Officer	_____ 99 Principal Executive 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: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF FINANCIAL CONDITION

Items on this page to be reported by a: Stand-Alone SBSD; Broker-Dealer SBSD; Stand-Alone MSBSP; Broker-Dealer MSBSP

ASSETS

Assets	Allowable	Non-Allowable	Total
1. Cash	$ 200		$ 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 the formula for reserve requirement under Rule 15c3-3a	$ 220		
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$ 999		
3. Other	$ 230		$ 770
B. Securities borrowed			
1. Includible in the formula for reserve requirement under Rule 15c3-3a	$ 240		
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$ 999		
3. Other	$ 250		$ 780
C. Omnibus accounts			
1. Includible in the formula for reserve requirement under Rule 15c3-3a	$ 260		
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$ 999		
3. Other	$ 270		$ 790
D. Clearing organizations			
1. Includible in the formula for reserve requirement under Rule 15c3-3a	$ 280		
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$ 999		
3. 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. Securities purchased under agreements to resell	$ 360	$ 605	$ 840
7. Trade date receivable	$ 292		$ 802
8. Total securities, including security-based swaps, and spot commodities and swaps owned at market value	$ 849		$ 850
Includes encumbered securities of: $ 120			
9. Securities owned not readily marketable			
A. At cost $ 130	$ 440	$ 610	$ 860
10. Other investments not readily marketable			
A. At cost $ 140			
B. At estimated fair value	$ 450	$ 620	$ 870

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF FINANCIAL CONDITION

Items on this page to be reported by a: Stand-Alone SBSD; Broker-Dealer SBSD; Stand-Alone MSBSP; Broker-Dealer MSBSP

Assets	Allowable	Non-Allowable	Total
11. Securities borrowed under subordination agreements and partners' individual and capital securities accounts, at market value			
A. Exempted securities [150]	$		
B. Other [160]	$ [460]	$ [630]	$ [880]
12. Secured demand notes – market value of collateral			
A. Exempted securities [170]	$		
B. Other [180]	$ [470]	$ [640]	$ [890]
13. 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]
14. Investment in and receivables from affiliates, subsidiaries and associated partnerships [480]	$	$ [670]	$ [910]
15. Property, furniture, equipment, leasehold improvements and rights under lease agreements At cost (net of accumulated depreciation and amortization) [490]	$	$ [680]	$ [920]
16. 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]
17. **TOTAL ASSETS** [540]	$	$ [740]	$ [940]

Note: MSBSPs should only complete the Allowable and Total columns.

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF FINANCIAL CONDITION

Items on this page to be reported by a: Stand-Alone SBSD; Broker-Dealer SBSD; Stand-Alone MSBSP; Broker-Dealer MSBSP

LIABILITIES AND OWNERSHIP EQUITY

Liabilities	A.I. Liabilities		Non-A.I. Liabilities		Total	
18. Bank loans payable						
A. Includible in the formula for reserve requirements under Rule 15c3-3a	$	1030	$	1240	$	1460
B. Includible in the formula for the deposit requirement under Rule 18a-4a	$	9999	$	9999	$	9999
C. Other	$	1040	$	1250	$	1470
19. Securities sold under repurchase agreements			$	1260	$	1480
20. Payable to brokers/dealers and clearing organizations						
A. Failed to receive						
1. Includible in the formula for reserve requirements under Rule 15c3-3a	$	1050	$	1270	$	1490
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$	9999	$	9999	$	9999
3. Other	$	1060	$	1280	$	1500
B. Securities loaned						
1. Includible in the formula for reserve requirements under Rule 15c3-3a	$	1070			$	1510
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$	9999			$	9999
3. Other	$	1080	$	1290	$	1520
C. Omnibus accounts						
1. Includible in the formula for reserve requirements under Rule 15c3-3a	$	1090			$	1530
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$	9999			$	9999
3. Other	$	1095	$	1300	$	1540
D. Clearing organizations						
1. Includible in the formula for reserve requirements under Rule 15c3-3a	$	1100			$	1550
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$	9999			$	9999
3. Other	$	1105	$	1310	$	1560
E. Other	$	1110	$	1320	$	1570
21. Payable to customers						
A. Securities accounts – including free credits of 950	$	1120			$	1580
B. Commodities accounts	$	1130	$	1330	$	1590
C. Security-based swap accounts – including free credits of 999	$	9999			$	9999
D. Swap accounts	$	9999	$	9999	$	9999
22. Payable to non-customers						
A. Securities accounts	$	1140	$	1340	$	1600
B. Commodities accounts	$	1150	$	1350	$	1610
C. Security-based swap accounts	$	9999	$	9999	$	9999
D. Swap accounts	$	9999	$	9999	$	9999
23. Other derivatives payables	$	9999	$	9999	$	1561
24. Trade date payable	$	9999	$	9999	$	1562
25. Securities sold but not yet purchased at market value – including arbitrage of 960			$	1360	$	1620
26. 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	$	9999	$	9999	$	1686
H. SPE liabilities	$	9999	$	9999	$	1687

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF FINANCIAL CONDITION

Items on this page to be reported by a: Stand-Alone SBSD; Broker-Dealer SBSD; Stand-Alone MSBSP; Broker-Dealer MSBSP

27. Notes and mortgages payable								
A. Unsecured	$		1210			$		1690
B. Secured	$		1211	$	1390	$		1700
28. 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(h)) 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(h)) 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
29. **TOTAL LIABILITIES**	$		1230	$	1450	$		1760

Ownership Equity

30. Sole proprietorship						$		1770
31. Partnership and limited liability company – including limited partners	$		1020			$		1780
32. Corporation								
A. Preferred stock				$	1791			
B. Common stock				$	1792			
C. Additional paid-in capital				$	1793			
D. Retained earnings				$	1794			
E. Total						$		1795
F. Less capital stock in treasury						$(	)	1796
33. **TOTAL OWNERSHIP EQUITY** (sum of Line Items 1770, 1780, 1795, and 1796)						$		1800
34. **TOTAL LIABILITIES AND OWNERSHIP EQUITY** (sum of Line Items 1760 and 1810)						$		1810

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	COMPUTATION OF NET CAPITAL (FILER AUTHORIZED TO USE MODELS)
	Items on this page to be reported by a: Stand-Alone SBSD (Authorized to use models) Broker-Dealer SBSD (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	$ _____ 9999		
4. Additional charges for customers' and non-customers' swap accounts	$ _____ 9999		
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. Contractual securities commitments			$ _____ 3660
10. Market risk exposure			
A. Total value at risk (sum of Lines 10A1-10A5)			$ _____ 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 (Line 10A minus Line 10B)			$ _____ 3643
D. Multiplication factor			$ _____ 3645
E. Subtotal (Line 10C multiplied by Line 10D)			$ _____ 3655

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

COMPUTATION OF NET CAPITAL (FILER AUTHORIZED TO USE MODELS)

Items on this page to be reported by a: Stand-Alone SBSD (Authorized to use models)
Broker-Dealer SBSD (Authorized to use models)
Broker-Dealer MSBSP (Authorized to use models)

11. Deduction for specific risk, unless included in Line 10 above			$ 3646
12. Risk deduction using scenario analysis			$ 3647
A. Fixed income	$ 3648		
B. Currency	$ 3649		
C. Commodities	$ 3651		
D. Equities	$ 3652		
E. Credit derivatives	$ 3653		
13. Residual marketable securities (see Rule 15c3-1(c)(2)(vi) or 18a-1(c)(1)(vii), as applicable)			$ 3665
14. Total market risk exposure (add Lines 10E, 11, 12 and 13)			$ 3677
15. Credit risk exposure for commercial end user counterparties (see Appendix E to Rule 15c3-1 or Rule 18a-1(e)(2), as applicable)			
A. Counterparty exposure charge (add Lines 15A1 and 15A2)			$ 3676
1. Net replacement value default, bankruptcy	$ 9999		
2. Credit equivalent amount exposure to the counterparty multiplied by the credit-risk weight of the counterparty multiplied by 8%	$ 9999		
B. Concentration charge			$ 3659
1. Credit risk weight ≤20%	$ 3656		
2. Credit risk weight >20% and ≤50%	$ 3657		
3. Credit risk weight >50%	$ 3658		
C. Portfolio concentration charge			$ 3678
16. Total credit risk exposure (add Lines 15A, 15B and 15C)			$ 3688
17. Net capital (subtract Lines 9, 14 and 16 from Line 8)			$ 3750

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

COMPUTATION OF NET CAPITAL (FILER NOT AUTHORIZED TO USE MODELS)

Items on this page to be reported by a: Stand-Alone SBSD (Not authorized to use models); Broker-Dealer SBSD (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		$ 9999	
4. Additional charges for customers' and non-customers' swap accounts		$ 9999	
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. Other securities		$ 3734	
D. Undue concentration		$ 3650	
E. Other (List:)		$ 3736	
10. Haircuts on security-based swaps		$ 9999	
11. Haircuts on swaps		$ 9999	
12. Total haircuts			$ 3740
13. Net capital (Line 8 minus Line 12)			$ 3750

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

COMPUTATION OF MINIMUM REGULATORY CAPITAL REQUIREMENTS (BROKER-DEALER)

Items on this page to be reported by a: Broker-Dealer SBSD
Broker-Dealer MSBSP

Calculation of Excess Tentative Net Capital (If Applicable)

1. Tentative net capital	$	3640
2. Minimum tentative net capital requirement	$	9999
3. Excess tentative net capital (difference between Lines 1 and 2)	$	9999
4. Tentative net capital in excess of 120% of minimum tentative net capital requirement reported on Line 2	$	9999

Calculation of Minimum Net Capital Requirement

4. Ratio minimum net capital requirement		
A. 6⅔% 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 $ 7490		
C. 8% of risk margin amount	$	9999
D. Minimum ratio requirement (sum of Lines 4A, 4B, and/or 4C, as applicable)	$	9999
5. Fixed-dollar minimum net capital requirement	$	3880
6. Minimum net capital requirement (greater of Lines 4D and 5)	$	3760
7. Excess net capital (Item 3750 minus Item 3760)	$	3910
8. 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 6	$	9999
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	$	9999

Computation of Aggregate Indebtedness

9. Total liabilities from Statement of Financial Condition (Item 1760)	$	3790
10. 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
11. Deduct: Adjustment based on deposits in Special Reserve Bank Accounts (see Rule 15c3-1(c)(1)(vii))	$	3838
12. Total aggregate indebtedness (sum of Line Items 3790 and 3830)	$	3840
13. Percentage of aggregate indebtedness to net capital (Item 3840 divided by Item 3750)	%	3850
14. Percentage of aggregate indebtedness to net capital *after* anticipated capital withdrawals (Item 3840 divided by Item 3750 less Item 4880)	%	3853

Calculation of Other Ratios

15. Percentage of net capital to aggregate debits (Item 3750 divided by Item 4470)	%	3851
16. Percentage of net capital, *after* anticipated capital withdrawals, to aggregate debits (Item 3750 less Item 4880, divided by Item 4470)	$	3854
17. Percentage of debt to debt-to-equity total, computed in accordance with Rule 15c3-1(d)	%	3860
18. 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: _____

FOCUS Report FORM SBS Part 1	COMPUTATION OF MINIMUM REGULATORY CAPITAL REQUIREMENTS (NON-BROKER-DEALER)
	Items on this page to be reported by a: Stand-Alone SBSD

Calculation of Excess Tentative Net Capital (If Applicable)

1. Tentative net capital	$	3640
2. Fixed-dollar minimum tentative net capital requirement	$	9999
3. Excess tentative net capital (difference between Lines 1 and 2)	$	9999
4. Tentative net capital in excess of 120% of minimum tentative net capital requirements reported on Line 2	$	9999

Calculation of Minimum Net Capital Requirement

5. Ratio minimum net capital requirement – 8% of risk margin amount	$	9999
6. Fixed-dollar minimum net capital requirement	$	3880
7. Minimum net capital requirement (greater of Lines 4 and 5)	$	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 6 (Line Item 3750 – [Line Item 3760 x 120%])	$	9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	COMPUTATION OF TANGIBLE NET WORTH
	Items on this page to be reported by a: Stand-Alone MSBSP Broker-Dealer MSBSP

1. Total ownership equity (from Item 1800)	$	1800
2. Goodwill and other intangible assets	$	9999
3. Tangible net worth (Line 1 minus Line 2)	$	9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF INCOME (LOSS)

Items on this page to be reported by a: Stand-Alone SBSD; Broker-Dealer SBSD; Stand-Alone MSBSP; Broker-Dealer MSBSP

REVENUE			FOCUS Report Reference Line
1. Fees, Commissions, or Premiums from Derivatives, Securities and Other Instruments			
A. Equities, ETFs and closed end funds	$	13935	A: 3935
B. Exchange listed equity securities executed OTC	$	13937	C/II: 3937
C. U.S. government and agencies	$	11001	
D. Foreign sovereign debt	$	11002	
E. Corporate debt	$	11003	
F. Mortgage-backed and other asset-backed securities	$	11004	
G. Municipals	$	11005	
H. Listed options	$	13938	A: 3938
I. OTC options	$	11006	
J. All other securities commissions	$	13939	A: 3939
K. Commodity transactions	$	13991	C: 3991, II/IIA: 39
L. Foreign exchange	$	11007	
M. Security-based swaps	$	99999	
N. Mixed swaps	$	99999	
O. Swaps	$	99999	
P. Aggregate amount if less than the greater of $5,000 or 5% of total revenue (Item 14030) (do not complete Lines 1A-1O)	$	11008	
1. Is any portion of Line 1P related to municipal securities? Yes ☐ No ☐ 11009			
Total Commissions (sum of Lines 1A-1O):	**$**	13940	A: 3940
2. Revenue from Sale of Investment Company Shares	$	13970	A: 3970
3. Revenue from Sale of Insurance Based Products			
A. Variable contracts	$	11020	
B. Non-securities insurance based products	$	11021	
C. Aggregate amount if less than the greater of $5,000 or 5% of total revenue (Item 14030) (do not complete Lines 3A-3B)	$	11022	
Total Revenue from Sale of Insurance Based Products (sum of Lines 3A-3B):	**$**	11029	
4. Gains or Losses on Derivative Trading Desks			
A. Interest rate/fixed income products	$	13921	C: 3921
B. Currency	$	13922	C: 3922
C. Equity products	$	13923	C: 3923
D. Commodity products	$	13924	C: 3924
E. Other	$	13925	C: 3925
Total Gains or Losses on Derivative Trading (sum of Lines 4A-4E):	**$**	13926	C: 3926
5. Gains or Losses on Principal Trades (Do not report amounts already reported on Lines 4A-4E)			
A. Equities, ETFs and closed end funds. Includes dividends: Yes ☐ No ☐ 11030	$	13903	C: 3903
B. U.S. government and agencies. Includes interest: Yes ☐ No ☐ 11031	$	11032	C: 3901
C. Foreign sovereign debt. Includes interest: Yes ☐ No ☐ 11033	$	11034	C: 3901
D. Corporate debt. Includes interest: Yes ☐ No ☐ 11035	$	11036	C: 3901
E. Mortgage-backed and other asset-backed securities. Includes interest: Yes ☐ No ☐ 11037	$	11038	C: 3901
F. Municipal securities. Includes interest: Yes ☐ No ☐ 11039	$	13901	C: 3901
G. Listed options	$	11040	
H. OTC options	$	11041	
I. Commodity transactions	$	13904	C: 3904

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	STATEMENT OF INCOME (LOSS)
	Items on this page to be reported by a: Stand-Alone SBSD Broker-Dealer SBSD Stand-Alone MSBSP Broker-Dealer MSBSP

J. Foreign exchange			$	13902	C: 3902
K. Futures			$	11044	
L. Security-based swaps (sum of Lines 5L1-5L4)			$	11042	
1. Debt security-based swaps (other than credit default swaps)	$	99999			
2. Equity security-based swaps	$	99999			
3. Credit default security-based swaps	$	99999			
4. Other security-based swaps	$	99999			
M. Mixed swaps			$	99999	
N. Swaps (sum of Lines 5N1-5N7)			$	11043	
1. Interest rate swaps	$	99999			
2. Foreign exchange swaps	$	99999			
3. Commodity swaps	$	99999			
4. Debt index swaps (other than credit default swaps)	$	99999			
5. Equity index swaps	$	99999			
6. Credit default swaps	$	99999			
7. Other swaps	$	99999			
O. Other			$	13951	C: 3951
P. Aggregate amount if less than the greater of $5,000 or 5% of total revenue (Item 14030) (do not complete Lines 5A-5O)			$	11045	
1. Is any portion of Line 5P related to municipal securities?	Yes ☐ No ☐	11046			
Total Gains or Losses on Principal Trades (sum of Lines 5A-5O):			**$**	13950	A: 3950
6. Capital Gains (Losses) on Firm Investment Accounts			$	13952	A: 3952
A. Includes dividends and/or interest	Yes ☐ No ☐	11053			
B. Realized capital gains (losses)	$	4235			C: 4235
C. Unrealized capital gains (losses)	$	4236			C: 4236
7. Interest / Rebate / Dividend Income					
A. Securities borrowings			$	11060	
B. Reverse repurchase transactions			$	11061	
C. Margin interest			$	13960	C/II: 3960
D. Revenue earned from customer bank sweep (FDIC insured products) programs			$	11062	
E. Revenue earned from customer fund sweeps into '40 Act investments			$	11063	
F. Interest and/or dividends on securities held in firm inventory (not otherwise reported)			$	11064	
G. Other interest			$	13953	C: 3953
H. Aggregate amount if less than the greater of $5,000 or 5% of total revenue (Item 14030) (do not complete Lines 7A-7G)			$	11065	
Total Interest / Rebate / Dividend Income (sum of Lines 7A-7G):			**$**	11069	
8. Revenue from Underwritings and Selling Group Participation					
A. Municipal offerings			$	11070	
B. Registered offerings					
1. Offerings other than self or affiliate (excludes municipal offerings)			$	11071	
2. Offerings, self or affiliate (excludes municipal offerings)			$	11072	
Total Revenue from Registered Offerings (sum of Lines 8A-8B2):			**$**	11079	
C. Unregistered offerings (excludes municipal offerings) (sections below refer to Operational Page – see instructions) Did the broker or dealer filing this report participate in the sale of any unregistered offering during the reporting period for which it received no compensation?	Yes ☐ No ☐	11080			
1. Unregistered offerings, other than self or affiliate offerings – Section 1			$	11081	
2. Unregistered offerings, self or affiliate offerings – Section 2			$	11082	
Total Revenue from Unregistered Offerings (sum of Line Items 11081 and 11082):			**$**	11089	

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF INCOME (LOSS)

Items on this page to be reported by a: Stand-Alone SBSD; Broker-Dealer SBSD; Stand-Alone MSBSP; Broker-Dealer MSBSP

Total Revenue from Underwritings and Selling Group Participation (sum of Line Items 11070, 11079, and 11089):	$	13955	A: 3955
9. Miscellaneous Fees Earned			
A. Fees earned from affiliated entities	$	11090	
B. Investment banking fees; M&A advisory	$	11091	
C. Account supervision and investment advisory services	$	13975	A: 3975
D. Administrative fees	$	11092	A: 3975
E. Revenue from research services	$	13980	C/II: 3980
F. Rebates from exchanges, ECNs, and ATSs	$	11093	
G. 12b-1 fees	$	11094	
H. Mutual fund revenue other than concessions or 12b-1 fees	$	11095	
I. Execution services	$	11096	
J. Clearing services	$	11097	
K. Fees earned on customer bank sweep (FDIC insured products) programs	$	11098	
L. Fees earned from sweep programs into '40 Act investments	$	11099	
M. Networking fees from '40 Act companies	$	11100	
N. Other fees	$	11101	
O. Aggregate amount if less than the greater of $5,000 or 5% of total revenue (Item 14030) (do not complete Lines 9A-9N)	$	11102	
Total Fees Earned (sum of Lines 9A-9N):	$	11109	
10. Other Revenue			
A. Total revenue from sale of certificates of deposit (CDs) issued by an affiliate	$	11126	
B. Other revenue	$	13995	A: 3995

If Line Item 13995 is greater than both 10% of Item 14030 and $5,000, provide a description of the 3 largest components of Other Revenue, along with the associated revenue for each.

B-1. Description of: 1st largest component of Other Revenue

[ ] 11120 $ _____ 11121

B-2. Description of: 2nd largest component of Other Revenue

[ ] 11122 $ _____ 11123

B-3. Description of: 3rd largest component of Other Revenue

[ ] 11124 $ _____ 11125

Total Revenue (sum of Line Items 11230, 11231, 11232, 11233, 11234, 11235, & 11236):	$	14030	A: 4030

EXPENSES

11. Compensation Expenses			
A. Registered representatives' compensation	$	14110	C/II: 4110
B. Compensation paid to all other revenue producing personnel (including temporary personnel)	$	14040	C/II: 4040
C. Compensation paid to non-revenue producing personnel (including temporary personnel)	$	11200	
D. Bonuses	$	11201	
E. Other compensation expenses	$	11202	
F. Aggregate amount if less than the greater of $5,000 or 5% of total expenses (Item 14200) (do not complete Lines 11A-11E)	$	11203	
Total Compensation Expenses (sum of Lines 11A-11E):	$	11209	
12. Commission, Clearance and Custodial Expenses			
A. Floor brokerage and fees paid	$	14055	C/II: 4055
B. Amounts paid to exchanges, ECNs, and ATSs	$	14145	C/II: 4145
C. Clearance fees paid to broker-dealers	$	11210	
D. Clearance fees paid to non-broker-dealers	$	14135	C/II: 4135
E. Commission paid to broker-dealers	$	14140	IIA: 4140
F. 12b-1 fees	$	11211	
G. Custodial fees	$	11212	

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	STATEMENT OF INCOME (LOSS)
	Items on this page to be reported by a: Stand-Alone SBSD; Broker-Dealer SBSD; Stand-Alone MSBSP; Broker-Dealer MSBSP

H. Aggregate amount if less than the greater of $5,000 or 5% of total expenses (Item 14200) (do not complete Lines 12A-12G)	$		11213	
Total Commission, Clearance and Custodial Fees (sum of Lines 12A-12G):	**$**		11219	
13. Expenses Incurred on Behalf of Affiliates and Others				
A. Soft dollar expenses	$		11220	
B. Rebates/recapture of commissions	$		11221	
Total Expenses incurred on Behalf of Affiliates and Others (sum of Lines 13A-13B):	**$**		11229	
14. Interest and Dividend Expenses				
A. Interest paid on bank loans	$		11230	
B. Interest paid on debt instruments where firm is the obligor, including subordination agreements	$		11231	
C. Interest paid on customer and security-based swap customer balances	$		11232	
D. Interest paid on securities loaned transactions	$		11233	
E. Interest paid on repurchase agreements	$		11234	
F. Interest and/or dividends on short securities inventory	$		11235	
G. Other interest expenses	$		11236	
H. Aggregate amount if less than the greater of $5,000 or 5% of total expenses (Item 14200) (do not complete Lines 14A-14G)	$		11237	
Total Interest and Dividend Expenses (sum of Lines 14A-14G):	**$**		14075	A: 4075
15. Fees Paid to Third Party Service Providers				
A. To affiliates	$		11240	
B. To non-affiliates	$		11241	
Total Fees Paid to Third Party Service Providers (sum of Lines 15A-15B):	**$**		11249	
16. General, Administrative, Regulatory and Miscellaneous Expenses				
A. Finders' fees	$		11250	
B. Technology, data and communication costs	$		14060	C/II: 4060, 4186
C. Research	$		11251	
D. Promotional fees	$		14150	C/II: 4150
E. Travel and entertainment	$		11252	
F. Occupancy and equipment expenses	$		14080	C/II: 4080
G. Non-recurring charges	$		14190	C/II: 4190
H. Regulatory fees	$		14195	A: 4195
I. Professional service fees	$		11253	
J. Litigation, arbitration, settlement, restitution and rescission, and related outside counsel legal fees	$		11254	
K. Losses in error accounts and bad debts	$		14170	C/II: 4170
L. State and local income taxes	$		11255	
M. Aggregate amount if less than the greater of $5,000 or 5% of total expenses (Item 14200) (do not complete Lines 16A-16L)	$		11256	
Total General, Administrative, Regulatory and Miscellaneous Expenses (sum of Lines 16A-16L):	**$**		11269	
17. Other Expenses				
A. Other expenses	$		14100	A: 4100

If Line Item 14100 is greater than both 10% of Item 14200 and $5,000, provide a description of the 3 largest components of Other Expenses, along with the associated expense for each.

A-1. Description of: 1st largest component of Other Expenses

[ ] 11280 $ _____ 11281

A-2. Description of: 2nd largest component of Other Expenses

[ ] 11282 $ _____ 11283

A-3. Description of: 3rd largest component of Other Expenses

[ ] 11284 $ _____ 11285

Total Expenses (sum of Line Items 11209, 11219, 11229, 14075, 11249, 11269, and 14100):	**$**		14200	A: 4200

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	STATEMENT OF INCOME (LOSS)
	Items on this page to be reported by a: Stand-Alone SBSD Broker-Dealer SBSD Stand-Alone MSBSP Broker-Dealer MSBSP

NET INCOME

18. Net Income

A. Income (loss) before Federal income taxes and items below	$	14210	A: 4210
B. Provision for Federal income taxes	$	14220	A: 4220
C. Equity in earnings (losses) of unconsolidated subsidiaries not included above	$	14222	A: 4222
1. After Federal income taxes of $ 4238			C/II: 4238
D. Extraordinary gains (losses)	$	14224	A: 4224
1. After Federal income taxes of $ 4239			C/II: 4239
E. Cumulative effect of changes in accounting principles	$	14225	A: 4225
F. Net income (loss) after Federal income taxes and extraordinary items	$	14230	A: 4230
Total Net Income (Line Item 14210 minus Line Items 14220, 14222, 14224, and 14225):	**$**	11299	

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	CAPITAL WITHDRAWALS
	Items on this page to be reported by a: Stand-Alone SBSD Broker-Dealer SBSD 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. The schedule 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: _____

FOCUS Report FORM SBS Part 1

CAPITAL WITHDRAWALS RECAP

Items on this page to be reported by a: Stand-Alone SBSD; Broker-Dealer SBSD; 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 OR CORPORATION)

1.	Balance, beginning of period			$	4240
	A. Net income (loss)			$	4250
	B. Additions (includes non-conforming capital of	$	4262	$	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: _____

FOCUS Report FORM SBS Part 1	FINANCIAL AND OPERATIONAL DATA
	Items on this page to be reported by a: Stand-Alone SBSD Broker-Dealer SBSD Broker-Dealer MSBSP

	Valuation	Number
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 ☐ 4930	No ☐ 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 mailed after settlement date		4990

	No. of Items	Ledger Amount	Market Value
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: _____

FOCUS Report FORM SBS Part 1

FINANCIAL AND OPERATIONAL DATA

Items on this page to be reported by a: Stand-Alone SBSD
Broker-Dealer SBSD
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	$	6012
2. Security suspense and differences with related money balances	L		5620	$	5820	$	6020	$	6022
	S		5625	$	5825	$	6025	$	6027
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	$	6032
4. Market value of security record breaks			5640	$	5840	$	6040	$	6042
5. Unresolved reconciling differences with others									
A. Correspondents, SBSDs, and MSBSPs	L		5650	$	5850	$	6050	$	6052
	S		5655	$	5855	$	6055	$	6057
B. Depositories			5660	$	5860	$	6060	$	6062
C. Clearing organizations	L		5670	$	5870	$	6070	$	6072
	S		5675	$	5875	$	6075	$	6077
D. Inter-company accounts			5680	$	5880	$	6080	$	6082
E. Bank accounts and loans			5690	$	5890	$	6090	$	6092
F. Other			5700	$	5900	$	6100	$	6102
G. (Offsetting) Lines 5A through 5F			5720	$( )	5920	$( )	6120		
TOTAL (Lines 5A-5G)			5730	$	5930	$	6130	$	6132
6. Commodity differences			5740	$	5940	$	6140	$	6142
7. Open transfers and reorganization account items over 40 days not confirmed or verified			5760	$	5960	$	6160	$	6162
8. TOTAL (Lines 1-7)			5770	$	5970	$	6170	$	6172
9. Lines 1-6 resolved subsequent to report date			5775	$	5975	$	6175	$	6177
10. Aged fails – to deliver			5780	$	5980	$	6180	$	6182
– to receive			5785	$	5985	$	6185	$	6187

NOTE A - This section must be completed as follows:

1. 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).
2. 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.
3. A response to Columns I through IV of Line 9 and the "Potential Operational Charges Not Deducted From Capital-Note B" schedule are required only if:
   A. The parameters cited in Note A-2 exist, and
   B. The total deduction, Line 8, Column IV, for the current month exceeds the total deductions for the prior month by 50% or more.
4. 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: _____

FOCUS Report FORM SBS Part 1

FINANCIAL AND OPERATIONAL DATA

Items on this page to be reported by a: Stand-Alone SBSD; Broker-Dealer SBSD; 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, SBSDs, 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:

1. Lines 1 through 6 and Columns I through IV must be completed only if:
   A. The total deductions on Line 8, Column IV, of the "Operational Deductions From Capital-Note A" schedule equal or exceed 25% of excess net capital as of the prior month end reporting date; and
   B. The total deduction on Line 8, Column IV, , of the "Operational Deductions From Capital-Note A" schedule for the current month exceeds the total deductions for the prior month by 50% or more. If respondent has nothing to report, enter "0."
2. 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.
3. Include in Column IV only additional deductions not comprehended in the computation of net capital at the report date.
4. 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.
5. 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.
6. Lines 1 through 5 above correspond to similar lines in the "Operational Deductions From Capita-Note A" schedule and the same instructions should be followed except as stated in Notes B-1 through B-5 above.

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

COMPUTATION FOR DETERMINATION OF RESERVE REQUIREMENTS
(See Rule 15c3-3, Exhibit A and Related Notes)

Items on this page to be reported by a: Broker-Dealer SBSD (if subject to Rule 15c3-3)
Broker-Dealer MSBSP (if subject to Rule 15c3-3)

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 15c3-3 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.

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	INFORMATION FOR POSSESSION OR CONTROL REQUIREMENTS UNDER RULE 15c3-3
	Items on this page to be reported by a: Broker-Dealer SBSD (if subject to Rule 15c3-3) Broker-Dealer MSBSP (if subject to Rule 15c3-3)

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 _____ 4585

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: _____

FOCUS Report FORM SBS Part 1

COMPUTATION FOR DETERMINATION OF PAB REQUIREMENTS

Items on this page to be reported by a: Broker-Dealer SBSD (if subject to Rule 15c3-3) Broker-Dealer MSBSP (if subject to Rule 15c3-3)

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.

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	CLAIMING AN EXEMPTION FROM RULE 15c3-3
	Items on this page to be reported by a: Broker-Dealer SBSD (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 one only):

A.	(k)(1) – $2,500 capital category as per Rule 15c3-3		4550
B.	(k)(2)(A) – "Special Account for the Exclusive Benefit of Customers" maintained		4560
C.	(k)(2)(B) – 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: _____

FOCUS Report FORM SBS Part 1

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, APPENDIX A

Items on this page to be reported by a: Stand-Alone SBSD
Broker-Dealer SBSD

CREDIT BALANCES

1. Free credit balances and other credit balances in the accounts carried for security-based swap customers	$		9999	
2. Monies borrowed collateralized by securities in accounts carried for security-based swap customers (see Note B)	$		9999	
3. Monies payable against security-based swap customers' securities loaned (see Note C)	$		9999	
4. Security-based swap customers' securities failed to receive (see Note D)	$		9999	
5. Credit balances in firm accounts attributable to principal sales to security-based swap customers	$		9999	
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days	$		9999	
7. **Market value of short security count differences over 30 calendar days old	$		9999	
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	$		9999	
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	$		9999	
10. Other (List: _____)	$		9999	
11. TOTAL CREDITS (sum of Lines 1-10)				$ _____ 9999

DEBIT BALANCES

12. Debit balances in accounts carried for security-based swap customers, excluding unsecured accounts and accounts doubtful of collection (see Note E)	$		9999	
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	$		9999	
14. Failed to deliver of security-based swap customers' securities not older than 30 calendar days	$		9999	
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)	$		9999	
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)	$		9999	
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)	$		9999	
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	$		9999	
19. Other (List: _____)	$		9999	
20. **Aggregate debit items				$ _____ 9999
21. **TOTAL 18a-4a DEBITS (sum of Lines 12-19)				$ _____ 9999

RESERVE COMPUTATION

22. Excess of total debits over total credits (Line 21 less Line 11)	$ _____	9999
23. Excess of total credits over total debits (Line 11 less Line 21)	$ _____	9999
24. Amount held on deposit in "Reserve Bank Account(s)," including value of qualified securities, at end of reporting period	$ _____	9999
25. Amount of deposit (or withdrawal) including $ _____ 9999 value of qualified securities	$ _____	9999
26. New amount in Reserve Bank Account(s) after adding deposit or subtracting withdrawal including $ _____ 9999 value of qualified securities	$ _____	9999
27. Date of deposit (MM/DD/YY)	$ _____	9999

** 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.

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	INFORMATION FOR POSSESSION OR CONTROL REQUIREMENTS UNDER RULE 18a-4
	Items on this page to be reported by a: 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 18a-4. Notes A and B ..... $ _____ 9999
   A. Number of items ..... _____ 9999
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. ..... $ _____ 9999
   A. Number of items ..... _____ 9999
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 _____ 9999 No _____ 9999

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: _____

FOCUS Report FORM SBS Part 2	BALANCE SHEET (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RC)
	Items on this page to be reported by a: Bank SBSD Bank MSBSP

Assets	Totals	
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	$	B987b
B. Securities purchased under agreements to resell	$	B989b
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	$	B528b
C. LESS: Allowance for loan and lease losses	$	3123b
D. Loans and leases, net of unearned income and allowance (Line 4B minus Line 4C)	$	B529b
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. Investment 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: _____

FOCUS Report FORM SBS Part 2	BALANCE SHEET (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RC)
	Items on this page to be reported by a: Bank SBSD Bank MSBSP

Liabilities	**Totals**	
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	$	B993b
B. Securities sold under agreements to repurchase	$	B995b
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.		
Equity Capital		
23. Perpetual preferred stock and related surplus	$	3828b
24. Common stock	$	3230b
25. Surplus (exclude all surplus related to preferred stock)	$	3839b
26A. Retained earnings	$	3632b
B. Accumulated other comprehensive income	$	B530b
C. Other equity capital components	$	A130b
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)	$	G105b
29. Total liabilities and equity capital (sum of Lines 21 and 28)	$	3300b

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 2	REGULATORY CAPITAL (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RC-R)
	Items on this page to be reported by a: Bank SBSD Bank MSBSP

Capital	**Totals**	
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 leverage capital purposes	$	L138b

Capital Ratios (Column B is to be completed by all banks. Column A is to be completed by banks with financial subsidiaries.)	**Column A**		**Column B**	
8. Tier 1 Leverage ratio	$	7273b	$	7204b
9. Tier 1 risk-based capital ratio		7274b	$	7206b
10. Total risk-based capital ratio		7275b	$	7205b

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 2	INCOME STATEMENT (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RI)
	Items on this page to be reported by a: Bank SBSD Bank MSBSP

	Totals	
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) (sum of Memoranda Lines 8a through 8e on FFIEC Form 031's Schedule RI)		
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) (included on Lines 8a through 8e on FFIEC Form 031's Schedule RI)	$	K090b
G. Impact on trading revenue of changes in the creditworthiness of the bank on the bank's derivative liabilities (included in Lines 8a through 8e on FFIEC Form 031's Schedule RI)	$	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: _____

FOCUS Report FORM SBS Part 2

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, APPENDIX A

Items on this page to be reported by a: Bank SBSD

CREDIT BALANCES

1. Free credit balances and other credit balances in the accounts carried for security-based swap customers	$		9999	
2. Monies borrowed collateralized by securities in accounts carried for security-based swap customers (see Note B)	$		9999	
3. Monies payable against security-based swap customers' securities loaned (see Note C)	$		9999	
4. Security-based swap customers' securities failed to receive (see Note D)	$		9999	
5. Credit balances in firm accounts attributable to principal sales to security-based swap customers	$		9999	
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days	$		9999	
7. Market value of short security count differences over 30 calendar days old	$		9999	
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	$		9999	
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	$		9999	
10. Other (List: _____)	$		9999	
11. TOTAL CREDITS				$ _____ 9999

DEBIT BALANCES

12. Debit balances in accounts carried for security-based swap customers, excluding unsecured accounts and accounts doubtful of collection (see Note E)	$		9999	
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	$		9999	
14. Failed to deliver of security-based swap customers' securities not older than 30 calendar days	$		9999	
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)	$		9999	
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)	$		9999	
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)	$		9999	
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	$		9999	
19. Other (List: _____)	$		9999	
20. TOTAL 18a-4a DEBITS				$ _____ 9999

RESERVE COMPUTATION

21. Excess of total debits over total credits (Line 21 less Line 11)	$	_____ 9999
22. Excess of total credits over total debits (Line 11 less Line 21)	$	_____ 9999
23. Amount held on deposit in "Reserve Bank Account(s)," including value of qualified securities, at end of reporting period	$	_____ 9999
24. Amount of deposit (or withdrawal) including $ _____ 9999 value of qualified securities	$	_____ 9999
25. New amount in Reserve Bank Account(s) after adding deposit or subtracting withdrawal including $ _____ 9999 value of qualified securities	$	_____ 9999
27. Date of deposit (MM/DD/YY)	$	_____ 9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 2	INFORMATION FOR POSSESSION OR CONTROL REQUIREMENTS UNDER RULE 18a-4
	Items on this page to be reported by a: Bank 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 18a-4. Notes A and B ..... $ _____ 9999
   A. Number of items ..... _____ 9999
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. ..... $ _____ 9999
   A. Number of items ..... _____ 9999
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 _____ 9999 No _____ 9999

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: _____

FOCUS Report FORM SBS Part 3	COMPUTATION OF CFTC MINIMUM CAPITAL REQUIREMENTS
	Items on this page to be reported by: A 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: _____

FOCUS Report FORM SBS Part 3

STATEMENT OF SEGREGATION REQUIREMENTS AND FUNDS IN SEGREGATION FOR CUSTOMERS TRADING ON U.S. COMMODITY EXCHANGES

Items on this page to be reported by a: 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	$	7050
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	$	9999
16. Excess (deficiency) funds in segregation over management target amount excess	$	9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 3

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: A 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	$	8580
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	$	9999
16. Excess (deficiency) funds in cleared swaps customer segregated accounts over (under) management target excess	$	9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 3	STATEMENT OF SEGREGATION REQUIREMENTS AND FUNDS IN SEGREGATION FOR CUSTOMERS' DEALER OPTIONS ACCOUNTS
	Items on this page to be reported by a: A Futures Commission Merchant

1. Amount required to be segregated in accordance with 17 C.F.R. § 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: _____

FOCUS Report FORM SBS Part 3	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 a: A Futures Commission Merchant

FOREIGN FUTURES AND FOREIGN OPTIONS SECURED AMOUNTS

	9999	Amount required to be set aside pursuant to law, rule, or regulation of a foreign government or a rule of a self-regulatory organization authorized thereunder	
1. Net ledger balance – Foreign futures and foreign options trading – All customers			
A. Cash			$ 9999
B. Securities (at market)			$ 9999
2. Net unrealized profit (loss) in open futures contracts traded on a foreign board of trade			$ 9999
3. Exchange traded options			$ 9999
A. Market value of open option contracts purchased on a foreign board of trade			$ 9999
B. Market value of open option contracts granted (sold) on a foreign board of trade			$ 9999
4. Net equity (deficit) (add Lines 1, 2, and 3)			$ 9999
5. Accounts liquidating to a deficit and accounts with debit balances – gross amount		$ 9999	
Less: Amount offset by customer owned securities		$ 9999	$ 9999
6. Amount required to be set aside as the secured amount – Net liquidating equity method (add Lines 4 and 5)			$ 9999
7. Greater of amount required to be set aside pursuant to foreign jurisdiction (above) or Line 6			$ 9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 3	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: A Futures Commission Merchant

FUNDS DEPOSITED IN SEPARATE 17 C.F.R. § 30.7 ACCOUNTS

1. Cash in banks			
A. Banks located in the United States	$ 7500		
B. Other banks qualified under 17 C.F.R. § 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 C.F.R. § 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 C.F.R. § 30.7 accounts (Item 7370)		$ 7770	
9. Excess (deficiency) set aside funds for secured amount (Line Item 7770 minus Line 7 of immediately preceding page)		$ 9999	
10. Management target amount for excess funds in separate 17 C.F.R. § 30.7 accounts		$ 9999	
11. Excess (deficiency) funds in separate 17 C.F.R. § 30.7 accounts over (under) management target excess		$ 9999	

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 4

SCHEDULE 1 – AGGREGATE SECURITIES, COMMODITIES, AND SWAPS POSITIONS

Items on this page to be Reported by: Stand-Alone SBSD; Broker-Dealer SBSD; Stand-Alone MSBSP; Broker-Dealer MSBSP

Aggregate Securities, Commodities, Swaps Positions	LONG		SHORT	
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	$	9999	$	9999
B. Debt securities issued by U.S. government agency and U.S. government-sponsored enterprises	$	9999	$	9999
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. Security-based swaps				
A. Debt security-based swaps (other than credit default swaps)				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
B. Equity security-based swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
C. Credit default security-based swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
D. Other security-based swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
13. Mixed swaps				
A. Cleared	$	9999	$	9999
B. Non-cleared	$	9999	$	9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 4

SCHEDULE 1 – AGGREGATE SECURITIES, COMMODITIES, AND SWAPS POSITIONS

Items on this page to be Reported by: Stand-Alone SBSD; Broker-Dealer SBSD; Stand-Alone MSBSP; Broker-Dealer MSBSP

	LONG		SHORT	
14. Swaps				
A. Interest rate swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
B. Foreign exchange swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
C. Commodity swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
D. Debt index swaps (other than credit default swaps)				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
E. Equity index swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
F. Credit default swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
G. Other swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
15. Other derivatives and options	$	8295	$	8296
16. Securities with no ready market				
A. Equity	$	8340	$	8341
B. Debt	$	8345	$	8346
C. Other (include limited partnership interests)	$	8350	$	8351
17. Other securities and commodities	$	8360	$	8361
18. Total (sum of Lines 1-17)	$	8370	$	8371

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 4

SCHEDULE 2 – CREDIT CONCENTRATION REPORT FOR FIFTEEN LARGEST EXPOSURES IN DERIVATIVES

Items on this page to be Reported by: Stand-Alone SBSD; Broker-Dealer SBSD; Stand-Alone MSBSP; Broker-Dealer MSBSP

I. By Current Net Exposure

Counterparty Identifier	Internal Credit Rating	Gross Replacement Value Receivable (Gross Gain)	Gross Replacement Value Payable (Gross Loss)	Net Replacement Value	Current Net Exposure	Total Exposure	Margin Collected
1. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
2. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
3. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
4. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
5. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
6. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
7. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
8. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
9. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
10. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
11. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
12. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
13. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
14. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
15. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
All other counterparties	N/A	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
	Totals:	$ 7810	$ 7811	$ 7812	$ 7813	$ 7814	$ 9999

II. By Total Exposure

Counterparty Identifier	Internal Credit Rating	Gross Replacement Value Receivable (Gross Gain)	Gross Replacement Value Payable (Gross Loss)	Net Replacement Value	Current Net Exposure	Total Exposure	Margin Collected
1. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
2. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
3. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
4. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
5. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
6. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
7. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
8. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
9. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
10. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
11. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
12. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
13. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
14. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
15. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
All other counterparties	N/A	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
	Totals:	$ 7810	$ 7811	$ 7812	$ 7813	$ 7814	$ 9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 4

SCHEDULE 3 – PORTFOLIO SUMMARY OF DERIVATIVES EXPOSURES BY INTERNAL CREDIT RATING

Items on this page to be Reported by: Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

Internal Credit Rating	Gross Replacement Value		Net Replacement Value	Current Net Exposure	Total Exposure	Margin Collected
	Receivable	Payable				
1.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
2.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
3.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
4.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
5.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
6.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
7.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
8.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
9.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
10.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
11.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
12.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
13.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
14.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
15.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
16.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
17.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
18.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
19.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
20.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
21.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
22.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
23.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
24.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
25.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
26.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
27.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
28.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
29.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
30.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
31.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
32.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
33.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
34.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
35.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
36.	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
Unrated	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
Totals:		$ 7822	$ 7823	$ 7821	$ 7820	$ 9999	$ 9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 4

SCHEDULE 4 – GEOGRAPHIC DISTRIBUTION OF DERIVATIVES EXPOSURES FOR TEN LARGEST COUNTRIES

Items on this page to be Reported by: Stand-Alone SBSD; Broker-Dealer SBSD; Stand-Alone MSBSP; Broker-Dealer MSBSP

I. By Current Net Exposure

Country	Gross Replacement Value: Receivable	Gross Replacement Value: Payable	Net Replacement Value	Current Net Exposure	Total Exposure	Margin Collected
1. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
2. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
3. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
4. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
5. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
6. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
7. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
8. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
9. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
10. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
Totals:	$ 7803	$ 7804	$ 7802	$ 9999	$ 7801	$ 9999

II. By Total Exposure

Country	Gross Replacement Value: Receivable	Gross Replacement Value: Payable	Net Replacement Value	Current Net Exposure	Total Exposure	Margin Collected
1. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
2. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
3. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
4. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
5. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
6. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
7. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
8. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
9. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
10. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
Totals:	$ 7803	$ 7804	$ 7802	$ 9999	$ 7801	$ 9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 5	SCHEDULE 1 – AGGREGATE SECURITY-BASED SWAP AND SWAP POSITIONS
	Items to be Reported by: Bank SBSDs Bank MSBSPs

Aggregate Positions	LONG		SHORT	
1. Security-based swaps				
A. Debt security-based swaps (other than credit default swaps)				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
B. Equity security-based swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
C. Credit default security-based swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
D. Other security-based swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
2. Mixed swaps				
A. Cleared	$	9999	$	9999
B. Non-cleared	$	9999	$	9999
3. Swaps				
A. Interest rate swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
B. Foreign exchange swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
C. Commodity swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
D. Debt index swaps (other than credit default swaps)				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
E. Equity index swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
F. Credit default swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 5	SCHEDULE 1 – AGGREGATE SECURITY-BASED SWAP AND SWAP POSITIONS
	Items to be Reported by: Bank SBSDs Bank MSBSPs

G. Other swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
4. Other derivatives	$	9999	$	9999
5. Total (sum of Lines 1-4)	$	9999	$	9999

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 FORM SBS INSTRUCTIONS

Part 4

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

Part 5

Schedule 1 – Aggregate Security-Based Swap and Swap Positions

GENERAL INSTRUCTIONS

FOCUS Report Form SBS ("Form SBS") constitutes the basic report required of those firms registered with the Securities and Exchange Commission ("Commission") as security-based swap dealers ("SBSDs") or major security-based swap participants ("MSBSPs"). The instructions issued from time-to-time must be used in preparing Form SBS and are considered an integral part of this report.

Who Must File

An SBSD or MSBSP must file Form SBS. The Form consists of five Parts, which apply to an SBSD or MSBSP based on the firm's registration status: (1) an SBSD or MSBSP that is not also registered as a broker-dealer or bank (respectively, a "stand-alone SBSD" or "stand-alone MSBSP"); (2) an SBSD or MSBSP that also is registered as a broker-dealer (respectively, a "broker-dealer SBSD" or "broker-dealer MSBSP"); (3) an SBSD or MSBSP supervised by a prudential regulator (respectively, a "bank SBSD" or "bank MSBSP"); or (4) any of the above if the SBSD or MSBSP also is registered as a futures commission merchant ("FCM"). An SBSD or MSBSP must complete: (1) Parts 1 and 4 of Form SBS if it is a stand-alone SBSD, broker-dealer SBSD, stand-alone MSBSP, or broker-dealer MSBSP; or (2) Parts 2 and 5 of Form SBS if it is a bank SBSD or bank MSBSP. In addition to completing those parts, the SBSD or MSBSP also must complete Part 3 if is also registered as an FCM.

Filing Requirements

Form SBS must be filed by nonbank SBSDs and nonbank MSBSPs within 17 business days of the end of the month in accordance with 17 C.F.R. § 240.17a-5 or 17 C.F.R. § 240.18a-7, as applicable. Form SBS must be filed by bank SBSDs and bank MSBSPs within 17 business days of the end of the quarter in accordance with 17 C.F.R. § 240.18a-7.

Form SBS must be filed with the firm's designated examining authority ("DEA"), or if none, then 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 thereof, it constitutes a representation that the SBSD or MSBSP has nothing to report.

Consolidated Reporting

In computing net capital, firms should consolidate their assets and liabilities in accordance with 17 C.F.R. §§ 240.15c3-1c 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, *i.e.*, 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, *i.e.*, for $180,000.17, use $180,001 but not $180,000. Money amounts should be expressed in whole dollars.

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 broker or dealer 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 C.F.R. § 240.15c3-1.

"Aggregate indebtedness" is defined in 17 C.F.R. § 240.15c3-1.

"Bona fide arbitrage" is defined in 17 C.F.R. § 240.15c3-1.

"Open contractual commitment" is defined in 17 C.F.R. § 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).

"Customer" and "non-customer" are defined in 17 C.F.R. § 240.15c3-1.

"Exempted securities" is defined in section 3 of the Securities Exchange Act of 1934.

"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 total exposure under applicable rules.

"Net capital" is defined in 17 C.F.R. §§ 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 Securities Exchange Act of 1934.

"Ready market" is defined in 17 C.F.R. §§ 240.15c3-1 or 18a-1, as applicable.

"Secured demand note" ("SDN") is defined in 17 C.F.R. § 240.15c3-1d.

"Securities not readily marketable" is defined in 17 C.F.R. §§ 240.15c3-1 or 18a-1, as applicable.

"Security-based swap customer" is defined in 17 C.F.R. § 240.18a-4.

"Total 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 C.F.R. § 240.18a-3,

- The initial margin for non-cleared swaps calculated under the CFTC's rules (regardless of whether the margin has been collected), and
- The maximum potential exposure as defined in 17 C.F.R. §§ 240.15c3-1 or 18a-1, as applicable, for any over-the-counter derivatives not included above.

SPECIFIC INSTRUCTIONS

COVER PAGE

The cover page must be answered 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 Form SBS, as it is registered with the Commission. Do not use DBAs or divisional names. Do not abbreviate.

20-23, 99 Address of principal place of business. Provide the physical address (not 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 specific report.

31 (Area code) Telephone no. Provide the direct telephone number of the contact person whose name appears on Line Item 30.

31, 35, 37, 39 Official use. This item is for use by regulatory staff only. Leave blank.

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 Form SBS with that of the firm filing Form SBS.

PART 1

Statement of Financial Condition

This section must be prepared by 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 C.F.R. § 240.15c3-1, 17 C.F.R. § 240.18a-1, or 17 C.F.R. § 240.18a-2, as applicable. With respect to liabilities, the columns entitled "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 C.F.R. § 240.15c3-1.

120 Total securities – includes encumbered securities. Report here the market value of total securities that are encumbered. Securities should be treated as encumbered when the firm transfers them to a creditor and that creditor has the right by contract or custom to sell or re-pledge the collateral. Encumbered inventory may be reported on a settlement date basis even if total inventory is reported on a trade date basis. Firms that introduce their proprietary accounts do not need to report the value of encumbered securities held by the carrying/clearing firm.

200 Allowable – cash. Report unrestricted cash balances. Do not report:

- Bank-negotiable certificates of deposits or similar bank money market instruments. Report bankers' acceptances, certificates of deposit, commercial paper, and money market instruments on Line Item 849.
- Petty cash. Report it on Miscellaneous Non-Allowable Assets (Line Item 720).
- Cash used to collateralize bank loans or other similar liabilities (compensating balances). Report these funds on Line Item 720.

- Overdrafts in unrelated banks. Report such overdrafts as Bank Loan (includible) (Line Item 1460) or as Drafts Payable (Line Item 1630).

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 thereof.

220 Allowable – receivables from brokers/dealers and clearing organizations – failed to deliver – includible in the formula for reserve requirement under Rule 15c3-3a. Do not report continuous net settlement ("CNS") fails to deliver here. Report them on Line Item 280.

999 Allowable – receivables from brokers/dealers and clearing organizations – failed to deliver – includible in the formula for the deposit requirement under Rule 18a-4a. Do not report CNS fails to deliver here. Report them on Line Item 999 (Clearing organizations – Includible in the formula for the deposit requirement under Rule 18a-4a).

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 the formula for reserve requirement under Rule 15c3-3a. If applicable, report here net ledger balances and losses and gains on commodities future contracts.

999 Allowable – receivables from brokers/dealers and clearing organizations – omnibus accounts – includible in the formula for the deposit requirement under Rule 18a-4a. 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 the formula for reserve requirement under Rule 15c3-3a. 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).

999 Allowable – receivables from brokers/dealers and clearing organizations – clearing organizations – includible in the formula for the deposit requirement under Rule 18a-4a. Report CNS fails to deliver allocating to security-based swap 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 C.F.R. § 220), 17 C.F.R. § 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 SFAS 140	$1000
Credit	FOCUS Item 1686	Obligation to return securities	$1000

Reclass firm inventory at market value of $1050 to Encumbered Inventory (Line Item 120) if loaned and applicable.

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 Form SBS. 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 C.F.R. § 240.15c3-1 or 17 C.F.R. § 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, 999, and 230.

780 Total – receivables from brokers/dealers and clearing organizations – securities borrowed. This line item is the sum of Line Items 240, 999, and 250.

790 Total – receivables from brokers/dealers and clearing organizations – omnibus accounts. This line item is the sum of Line Items 260, 999, and 270.

800 Total – receivables from brokers/dealers and clearing organizations – clearing organizations. This line item is the sum of Line Items 280, 999, 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.

849 Allowable – total securities, including security-based swaps, and spot commodities and swaps owned at market value. Report the long market value for securities, spot commodities, and swaps netted, including the value of derivative contracts that is allowable under 17 C.F.R. §§ 240.15c3-1 or 18a-1, as applicable.

850 Total – total securities, including security-based swaps, and spot commodities and swaps owned. This line item is equal to Line Item 849.

860 Total – securities owned not readily marketable. This line item is the sum of Line Items 440 and 610.

870 Total – other investments not readily marketable. This line item is the sum of Line Items 450 and 620.

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. Do not report here amounts reported on Line Item 999 (Security-based swap accounts payable to customers – free credits).

999 Payable to customers – security-based swap accounts – including free credits. Do not report credits related to short sales of securities. Do not report here amounts reported on Line Item 950.

960 Securities sold but not yet purchased – arbitrage. Report that part of Line Item 1620 that is deemed to be part of a bona fide arbitrage.

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 C.F.R. § 240.15c3-1 or 17 C.F.R. § 240.18a-1, as applicable, for debt to debt-equity requirements. See also 17 C.F.R. § 240.15c3-1d and 17 C.F.R. § 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 17 C.F.R. § 240.15c3-1 or 17 C.F.R. § 240.18a-1, as applicable, for debt to debt-equity requirements.

See also 17 C.F.R. § 240.15c3-1d and 17 C.F.R. § 240.18a-1d regarding events of acceleration and default.

1020 Partnership and LLC – including limited partners. Report that portion of Line Item 1780 that represents the capital contributions of limited partners to the limited partnership. Limited liability companies ("LLCs") should leave this line item blank.

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 the formula for reserve requirements under Rule 15c3-3a. Do not report here CNS failed to receive relating to customers. Report them on Line Item 1550.

9999 Payable to brokers/dealers and clearing organizations – failed to receive – includible in the formula for the deposit requirement under Rule 18a-4a. Do not report here CNS failed to receive relating to security-based swap customers. Report them on Line Item 9999 (Clearing organizations - includible in the formula for the deposit requirement under 17 C.F.R. § 240.18a-4a).

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 the formula for reserve requirements under Rule 15c3-3a. Report here customer-related credit balances in accounts carried by other firms pursuant to omnibus agreements.

9999 Payable to brokers/dealers and clearing organizations – omnibus accounts – includible in the formula for the deposit requirement under Rule 18a-4a. Report here security-based swap 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 the formula for reserve requirements under Rule 15c3-3a. 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 C.F.R. § 240.15c3-3a and 17 C.F.R. § 240.18a-4a.

9999 Payable to brokers/dealers and clearing organizations – clearing organizations – includible in the formula for the deposit requirement under Rule 18a-4a. CNS fails to receive allocating to security-based swap customers are also included on this line item. CNS balances may be reported on a net basis by category (customers, security-based swap customers, non-customers and non-security-based swap customers); however, they should be allocated broadly for purposes of the formulas under 17 C.F.R. § 240.15c3-3a and 17 C.F.R. § 240.18a-4a.

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. SBSDs should report here cash borrowings that are subordinated to the claims of creditors, and meet the minimum requirements of 17 C.F.R. § 240.15c3-1d or 17 C.F.R. § 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 SBSDs, broker-dealer SBSDs, and broker-dealer MSBSPs that are authorized by the Commission to calculate net capital using internal models in accordance with 17 C.F.R. §§ 240.15c3-1e and 240.18a-1(d), as applicable.

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 entitled "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 C.F.R. § 240.15c3-1 or 17 C.F.R. § 240.18a-1, as applicable. Report also any flow-through capital that has been approved by the Commission pursuant to 17 C.F.R. § 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 C.F.R. § 240.15c3-1 or 17 C.F.R. § 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.

Computation of Net Capital (Filer Not Authorized to Use Models)

This section must be prepared by stand-alone SBSDs, broker-dealer SBSDs, and broker-dealer MSBSPs that are not authorized by the Commission to calculate net capital using internal models in accordance with 17 C.F.R. § 240.15c3-1e or 17 C.F.R. § 240.18a-1(d), as applicable.

Follow the instructions in the immediately preceding section entitled "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 C.F.R. § 240.15c3-1 or 17 C.F.R. § 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.

Computation of Minimum Regulatory Capital Requirements (Broker-Dealer)

This section must be prepared by broker-dealer SBSDs 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
- 4% of funds required to be segregated pursuant to the Commodity Exchange Act.

Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer)

This section must be prepared by stand-alone SBSDs. The calculation of excess tentative net capital should only be completed by stand-alone SBSDs that are authorized to calculate net capital using internal models.

Computation of Tangible Net Worth

This section must be prepared by stand-alone MSBSPs and broker-dealer MSBSPs.

Statement of Income (Loss)

This section must be prepared by stand-alone SBSDs, broker-dealer SBSDs, stand-alone MSBSPs, and broker-dealer MSBSPs.

The Statement of Income (Loss) is largely based on the Supplemental Statement of Income (Loss) from FINRA's Supplemental Statement of Income ("SSOI"). Follow the instructions in the section of the SSOI Instructions entitled "Specific Instructions" to the extent it contains instructions corresponding with the applicable line item number (unless contrary instructions are provided below).

For the purposes of the Statement of Income (Loss), "registered offering" means an offering registered with the SEC.

Capital Withdrawals

This section must be prepared by 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 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 SBSDs, broker-dealer SBSDs, 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 Form SBS 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 mailed after settlement date. Include confirmations for which the incorrect original was mailed 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 C.F.R. § 240.15c3-3a or Note E to 17 C.F.R. § 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, SBSDs, and MSBSPs – long – debits. Report here the debit amount applicable to all unresolved reconciling items (favorable or unfavorable) with correspondents, SBSDs, and/or MSBSPs that are long and unresolved within seventeen business days from record date. Do not net these items.

5855 Correspondents, SBSDs, and MSBSPs – short – debits. Report here the debit amount applicable to all unresolved reconciling items (favorable or unfavorable) with correspondents, SBSDs, 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 Form SBS' 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, SBSDs, and MSBSPs – long – credits. Report here the credit amount applicable to all unresolved reconciling items (favorable or unfavorable) with correspondents, SBSDs, and/or MSBSPs that are long and unresolved within seventeen business days from record date.

6055 Correspondents, SBSDs, and MSBSPs – short – credits. Report here the credit amount applicable to all unresolved reconciling items (favorable or unfavorable) with correspondents, SBSDs, 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 Reserve Requirements – Rule 15c3-3, Exhibit A and Related Notes

This section must be prepared by broker-dealer SBSDs and broker-dealer MSBSPs. See also the notes accompanying 17 C.F.R. § 240.15c3-3a.

Note that broker-dealer SBSDs must also complete the "Computation for Determination of Reserve Requirements – Rule 18a-4, Appendix A" with regard to security-based swap customers' accounts (while limiting this calculation under 17 C.F.R. § 240.15c3-3a to customers' accounts). The term "customer" is defined in 17 C.F.R. § 240.15c3-3.

Information for Possession or Control Requirements under Rule 15c3-3

This section must be prepared by broker-dealer SBSDs and broker-dealer MSBSPs.

Note that broker-dealer SBSDs must also complete the Computation for Determination of Reserve Requirements under 17 C.F.R. § 240.18a-4a with regard to security-based swap customers' security-based swap accounts (while limiting this calculation under 17 C.F.R. § 240.15c3-3a to security accounts).

Computation for Determination of PAB Requirements

This section must be prepared by broker-dealer SBSDs and broker-dealer MSBSPs.

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, Appendix A

This section must be prepared by stand-alone SBSDs and broker-dealer SBSDs. See also the notes accompanying 17 C.F.R. § 240.18a-4a.

Note that broker-dealer SBSDs must also complete the "Computation for Determination of Reserve Requirements – Rule 15c3-3, Exhibit A and Related Notes" with regard to customers' accounts (while limiting this calculation under 17 C.F.R. § 240.18a-4a to security-based swap customers' accounts). The term "security-based swap customer" is defined in 17 C.F.R. § 240.18a-4.

Information for Possession or Control Requirements under Rule 18a-4

This section must be prepared by stand-alone SBSDs and broker-dealer SBSDs.

Note that broker-dealer SBSDs must also complete the Computation for Determination of Reserve Requirements under 17 C.F.R. § 240.15c3-3a with regard to customers' security accounts (while limiting this calculation under 17 C.F.R. § 240.18a-4a to security-based swap accounts).

PART 2

Balance Sheet (Information as Reported on FFIEC Form 031 – Schedule RC)

This section must be prepared by bank SBSDs and bank MSBSPs.

This section should be prepared in accordance with the FFIEC Instructions, including "Schedule RC – Balance Sheet." Thus, dollar amounts should be reported in thousands. In addition, the data reported on this section should only be updated quarterly.

Regulatory Capital (Information as Reported on FFIEC Form 031 – Schedule RC-R)

This section must be prepared by bank SBSDs and bank MSBSPs.

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. In addition, the data reported on this section should only be updated quarterly.

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 Form SBS) 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 SBSDs and bank MSBSPs.

This section should be prepared in accordance with the FFIEC Instructions, including "Schedule RI – Income Statement." Thus, dollar amounts should be reported in thousands. In addition, the data reported on this section should only be updated quarterly.

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 Form SBS) when matching Schedule RI's instructions with this section.

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, Appendix A

This section must be prepared by bank SBSDs.

This section should be prepared in accordance with the instructions accompanying the section in Part 1 of Form SBS entitled "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, Appendix A."

Information for Possession or Control Requirements under Rule 18a-4

This section must be prepared by bank SBSDs.

This section should be prepared in accordance with the instructions accompanying the section in Part 1 of Form SBS entitled "Information for Possession or Control Requirements under Rule 18a-4."

PART 3

Computation of CFTC Minimum Capital Requirements

This section must be prepared by all SBSDs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act, and all 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"), including the instructions accompanying the section entitled "Statement of the Computation of the Minimum Capital Requirements."

Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges

This section must be prepared by all SBSDs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act, and all 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, including the section entitled "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

This section must be prepared by all SBSDs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act, and all 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, including the section entitled "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

This section must be prepared by all SBSDs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act, and all 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, including the section entitled "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

This section must be prepared by all SBSDs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act, and all 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, including the section entitled "Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers."

PART 4

Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions

This schedule must be prepared by stand-alone SBSDs, broker-dealer SBSDs, stand-alone MSBSPs, and broker-dealer MSBSPs.

For the applicable security-based swap, mixed swap, or swap, report the month-end gross replacement value for cleared and non-cleared receivables in the long column, and report the month-end gross replacement value for cleared and non-cleared payables in the short column. Reports totals on the "Total" row.

Terms may be defined by reference to other sections of the instructions accompanying Form SBS (*e.g.*, Line Item 8290 (Arbitrage) may be defined by reference to Line Item 422 (Arbitrage)). Derivatives should be defined by referenced to the section of the instructions entitled "Definitions of Derivatives."

Schedule 2 – Credit Concentration Report for Fifteen Largest Exposures in Derivatives

This schedule must be prepared by stand-alone SBSDs, broker-dealer SBSDs, stand-alone MSBSPs, and broker-dealer MSBSPs.

On the penultimate row of each table, entitled "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 to which the firm has the largest total exposure, beginning with the counterparty to which the firm has the largest total exposure.

Identify each counterparty by its unique counterparty identifier.

Internal credit rating. Report the applicable counterparty's internal credit rating as assigned by the firm.

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.

Total exposure. For the applicable counterparty, report here the firm's total 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 SBSDs, broker-dealer SBSDs, 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.

Total exposure. For the applicable internal credit rating notch, report here the firm's total 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 SBSDs, broker-dealer SBSDs, stand-alone MSBSPs, and broker-dealer MSBSPs.

Country. Identify the 10 largest countries according to the firm's current net exposure or total 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 first table, countries should be

ordered according to the size of the firm's total 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.

Total exposure. For the applicable country, report here the firm's total 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.

Part 5

Schedule 1 – Aggregate Security-Based Swap and Swap Positions

This schedule must be prepared by bank SBSDs 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 column, and report the quarter-end gross replacement value for cleared and non-cleared payables in the short column. Report total on the "Total" row.

Derivatives should be defined by referenced to the section of the instructions entitled "Definitions of Derivatives."

* * * * *

By the Commission.

Date: April 17, 2014.

Kevin M. O'Neill,

Deputy Secretary.

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