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17 CFR Parts 240 and 249
Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–65543; File No. S7–40–11]

RIN 3235–AL05

Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: Section 764(a) of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') requires the Securities and Exchange Commission (''Commission'') to issue rules to provide for the registration of security-based swap dealers (''SBS Dealers'') and major security-based swap participants (collectively, ''SBS Entities''). Pursuant to this requirement, the Commission is proposing new Rules 15Fb1–1 through 15Fb6–1 under the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), to provide for the registration of SBS Entities. The Commission is also proposing forms to facilitate registration (and withdrawal from registration) of these entities.

DATES: Comments should be received on or before December 19, 2011.

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 e-mail to *rule-comments@sec.gov*. Please include File Number S7–40–11 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 in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–40–11. This file number should be included on the subject line if e-mail 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 will also be 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 a.m. and 3 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 available publicly.

FOR FURTHER INFORMATION CONTACT: David W. Blass, Chief Counsel; Joseph Furey, Assistant Chief Counsel; or Bonnie Gauch, Special Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

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I. Introduction

A. Background

On July 21, 2010, the President signed the Dodd-Frank Act into law.[1] The Dodd-Frank Act was designed to promote, among other things, the financial stability of the United States by improving accountability and transparency in the financial system.[2] Among other measures, the Dodd-Frank Act provides the Commission and the Commodity Futures Trading Commission (''CFTC'') with authority to regulate certain aspects of the over-the-counter (''OTC'') derivatives market, where the recent financial crisis demonstrated a need for enhanced regulation. The Dodd-Frank Act is intended to provide the Commission

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

[2] *See id.,* at Preamble.

and the CFTC with effective new regulatory tools to oversee that market, which has grown exponentially in recent years and is capable of affecting significant sectors of the U.S. economy.

Title VII of the Dodd-Frank Act broadly categorizes covered products as ''swaps,'' [3] regulated primarily by the CFTC, ''security-based swaps,'' [4] regulated primarily by the Commission, or ''mixed swaps,'' jointly regulated by the Commission and the CFTC.[5] Among other things, the Dodd-Frank Act prohibits any person from acting as a ''security-based swap dealer'' [6] or ''major security-based swap participant'' [7] without being registered with the Commission, and requires that the Commission issue rules to provide for registration of these SBS Entities.[8]

The Commission is proposing Rules 15Fb1–1 to 15Fb6–1 under the Exchange Act to establish procedures for an SBS Entity to register with the Commission and additional provisions related to such registration, including: (1) A requirement to amend an inaccurate application for registration; (2) procedures for succession to, or withdrawal from, registration; and (3) procedures for the Commission to cancel or revoke registration.[9] The proposed rules would also establish a requirement for an SBS Entity to certify that none of its associated persons that effect, or are involved in effecting, security-based swaps on the SBS Entity's behalf is subject to statutory disqualification. The Commission is proposing forms to facilitate SBS Entities' registration and withdrawal from registration.

The proposed rules and forms would address additional registration requirements applicable to nonresident SBS Entities, including requirements to appoint a U.S. agent for service of process, and to provide an opinion of counsel regarding the entity's ability to (1) Provide the Commission with prompt access to books and records, and (2) be subject to onsite examinations and inspections by the Commission.

In proposing these rules and forms, the Commission is mindful that there are similarities and differences among SBS Entities that hold substantial positions in security-based swaps and dealers and participants that hold substantial positions in other financial products. The Commission also understands that there are similarities and differences between the security-based swap market and the markets for other financial products. The Commission believes that, both over time and as a result of Commission proposals to implement the Dodd-Frank Act, further information concerning the application of existing registration and regulatory regimes to SBS Entities and the development of the security-based swap market may alter certain considerations relating to the registration of SBS Entities. During the process of implementing the Dodd-Frank Act and beyond, the Commission intends to closely monitor developments relating to SBS Entities and the security-based swap markets. In particular, the Commission intends to evaluate further information concerning the range of market participants that may register as SBS Entities, the activities of and services provided by such market participants, whether these activities and services are identical or similar to activities and services already regulated by the federal securities laws or other laws, and how applicable existing registration and regulatory regimes interact with one another and apply to SBS Entities.

B. General Approach to the SBS Entity Registration Process

The Commission's proposed registration requirements for SBS Entities largely are modeled after the registration regime applicable to broker-dealers,[10] while also taking into account the CFTC's registration requirements for intermediaries.[11] We preliminarily believe that because the proposed requirements would closely align with current requirements for our other registrants, and would be similar to the registration regime for CFTC registrants, this approach would provide the Commission and the staff with key information about registrants while leveraging Commission staff experience and standing procedures to facilitate a

[3] Defined in Section 1a of the Commodity Exchange Act (''CEA'').

[4] Defined in Section 3(a)(68) of the Exchange Act. All references to the Exchange Act contained in this release refer to the Securities Exchange Act of 1934, as modified by the Dodd-Frank Act.

[5] In addition, Section 712(d)(1) of the Dodd-Frank Act directs the Commission and the CFTC, in consultation with the Board of Governors of the Federal Reserve System, to propose rules and interpretative guidance to further define, among other things, the terms ''security-based swap,'' ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' and ''major security-based swap participant.'' The Commission and CFTC jointly proposed further rules and guidance with respect to the dealer and participant definitions on December 7, 2010. *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. 63452 (Dec. 7, 2010), 75 FR 80174 (Dec. 10, 2010) (the ''Intermediary Definitions Release''). The Commission and CFTC jointly proposed further rules and guidance with respect to the definitions of ''swap'', ''security-based swap'', and other terms on April 29, 2011. *Further Definition of ''Swap, '' ''Security-Based Swap, '' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Exchange Act Release No. 64372 (Apr. 29, 2011), 76 FR 29818 (May 23, 2011)).

[6] Subject to certain exceptions, Exchange Act Section 3(a)(71)(A) defines ''security-based swap dealer'' to mean any person who: (i) Holds themself out as a dealer in security-based swaps; (ii) makes a market in security-based swaps; (iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps. *See also supra* note 5.

[7] Exchange Act Section 3(a)(67)(A) defines ''major security-based swap participant'' to mean ''any person: (i) who is not a security-based swap dealer; and (ii)(I) 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; (II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or (III) that is a financial entity that (aa) 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; and (bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.'' *See also supra* note 5.

[8] The Commission has concluded that SBS Entities that were not registered with the Commission as of the July 16, 2011, effective date of Section 15F of the Exchange Act are permitted to lawfully continue their business absent Commission action with respect to the SBS Entity registration regime. *See Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps,* Exchange Act Release No. 64678 (Jun. 15, 2011), 76 FR 36287, 36299–300 (Jun. 22, 2011) (the ''Effective Date Release'').

[9] The Exchange Act gives the Commission broad authority to craft a registration regime for SBS Entities that helps the Commission accomplish its missions of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. For example, Section 15F(b)(2) of the Exchange Act states that an application for registration ''shall be made in such form and manner as prescribed by the Commission, and shall contain such information as the Commission considers necessary concerning the business in which the applicant is or will be engaged.'' In addition, Section 15F(d)(1) of the Exchange Act directs the Commission to ''adopt rules for persons that are registered as [SBS Entities] under [Section 15F].''

[10] This includes rules promulgated under Sections 15(b) and 17(a) of the Exchange Act.

[11] 17 CFR 3.1 *et seq.* Futures commission merchants (''FCMs'') and introducing brokers presently register with the CFTC by filing Form 7–R with the National Futures Association. The CFTC has proposed to register swap dealers and major swap participants through this same process. *See* 75 FR 71379, at 71382 (Nov. 23, 2010).

substantive review of applications for registration and inspections of registrants. In addition, the broker-dealer registration regime should be familiar to, and understood by, many SBS Entities. In particular, SBS Dealers may already be registered and regulated as broker-dealers or may be affiliated with a broker-dealer. Moreover, if an SBS Dealer enters into security-based swap transactions with persons that are not eligible contract participants, it must register as a broker-dealer unless an exemption or exception applies.[12] The proposed approach would seek to ensure that a market participant registered as both an SBS Entity and a broker-dealer is subject to a similar and complementary registration regime. It could therefore both ease the regulatory burden on such entities and help to establish a consistent regime for regulating SBS Dealers and dealers of other securities.

As explained below, our proposed approach to the application process would build on our existing broker-dealer registration forms—most notably, Form BD—but also is designed to avoid unnecessary duplication by permitting SBS Entities that are otherwise registered or registering as intermediaries with either the Commission or the CFTC to complete simplified application forms. Under this process, SBS Entities registered or registering with the Commission as broker-dealers or with the CFTC as swap dealers or major swap participants would submit a shorter SBS Entity registration form along with a copy of their existing registration form.

An SBS Entity would be permitted to file an application for registration as soon as final registration rules and forms are adopted. Further, each SBS Entity would need to be registered (at least conditionally) by the compliance date set forth in the final registration rules. In certain circumstances, SBS Entities would be required to apply for *conditional* registration, which they could convert to *ongoing* registration by fulfilling the applicable requirements set forth in the proposed rules. As discussed in more detail below, those requirements would differ depending on whether: (1) The application was filed with the Commission before or after the compliance dates for certain new rules to be adopted pursuant to Section 15F of the Exchange Act; and (2) the applicant is an SBS Dealer or instead is a major security-based swap participant. Conditional registration would expire after a specified time, and a conditionally registered SBS Entity would be required to cease its security-based swap business if it had not satisfied the applicable conditions to convert its registration to an ongoing registration. The Commission could, however, extend any conditional registration for good cause.

Although the Commission may be familiar with SBS Entities that are already registered with the Commission (*e.g.,* broker-dealers or investment advisers), the Commission is mindful that SBS Entities will nonetheless constitute a new class of registrants that may present business models and practices with which the Commission will need to gain experience. Accordingly, the Commission expects that its careful review of each application for registration and each certification on Form SBSE–C (the ''Senior Officer Certification'' described further below) will not only facilitate the Commission's decision to grant or deny registration to an SBS Entity, but also help to develop this experience and aid in the identification of areas for further inquiry, including, as may be appropriate, examinations of particular firms or business units by the Commission's Office of Compliance Inspections and Examinations (''OCIE''), in order to establish an effective ongoing examination program for such entities.[13]

OCIE currently uses risk-based methodologies to focus Commission examination resources on firms and activities that could pose the greatest risk to investors and the integrity of the markets. Consistent with that general approach, OCIE and the Division of Trading and Markets intend jointly to perform a substantive review of applications and Senior Officer Certifications received for registration of SBS Entities to determine whether additional Commission action is appropriate and to evaluate potential registrants' risk for purposes of prioritizing examinations.

1. Conditional Registration

Under the proposed rules, an SBS Entity seeking Commission registration generally would be required to apply for conditional registration by submitting a complete application to the Commission. The Commission would then grant conditional registration if it finds that the SBS Entity's application is complete, except that the Commission may institute proceedings to determine whether the Commission should deny conditional registration if the applicant is subject to a statutory disqualification or the Commission is aware of inaccurate statements in the application.[14] The Commission would notify the entity electronically when conditional registration is granted, and would make information regarding registration status publicly available.

For an SBS Entity to convert its conditional registration to ongoing registration, it would be required to submit a Senior Officer Certification signed by one of its knowledgeable senior officers. The contents of the Senior Officer Certification and the time frame within which it must be submitted to the Commission are described more fully below and specified in the rule. Generally, however, the Senior Officer Certification would state that, after due inquiry, the senior officer has reasonably determined that the SBS Entity has the operational, financial, and compliance capabilities to act as an SBS Dealer or a major security-based swap participant, as applicable, and has documented the process by which he or she reached such determination. We preliminarily believe that this certification requirement would help to protect both investors and markets from potential problems arising from SBS Entities that may lack the capabilities necessary to operate their businesses in compliance with their regulatory obligations.

[12] *See* 15 U.S.C. 78c(a)(5) and 78o(a).

[13] In addition to SBS Entities, the Dodd-Frank Act requires the Commission to register for the first time security-based swap execution facilities, security-based swap data repositories, municipal advisors, and certain private fund advisers. In light of these new categories of registrants, the Commission is presently reviewing the various standards and processes it uses to facilitate registration of the many types of entities required to register with it—including broker-dealers, investment advisers, nationally recognized statistical rating organizations, transfer agents, clearing agencies, exchanges, national securities associations, and others. In this regard, the Commission plans to issue a concept release designed to collect information and evaluate different aspects of these registration standards and processes. In particular, the Commission intends to consider the policy objectives of registration, how best to achieve those policy objectives through registration and other means, and the relative benefits and costs of the various means available. Through such a concept release, the Commission would hope to gain insight into how evolving market practices, technology, and other considerations could affect or be affected by the Commission's approach to the registration processes for various types of entities. Recognizing that the Commission has finite resources to allocate to registration, examination, and enforcement functions, the Commission intends to use the concept release to seek comment as to how it can most effectively and efficiently utilize these registration and other functions to help ensure that entities registered by the Commission to perform important financial intermediary and other functions in the securities markets have the capability to carry out those functions and to fully comply with all applicable regulatory requirements.

[14] Such proceedings would include notice of the grounds for denial under consideration and opportunity for hearing, and that at the conclusion of such proceedings, the Commission would grant or deny such registration. *See* proposed Rule 15Fb2–1(d)(1).

i. Implementation Plan and the Last Compliance Date

After proposing all of the key rules under Title VII, the Commission intends to seek public comment on a detailed implementation plan that will permit a roll-out of the new securities-based swap requirements in a logical, progressive, and efficient manner, while minimizing unnecessary disruption and costs to the markets. Among other things, the implementation plan would inform the timing of the requirement for SBS Entities to register with the Commission, including whether such registration requirement would exist prior to the latest date, designated by the Commission, by which SBS Dealers and major security-based swap participants must begin complying with all of the initial rules promulgated under Section 15F of the Exchange Act (''Last Compliance Date'').[15]

The Commission believes it is possible that SBS Entities may be required to register before the Last Compliance Date.[16] For these ''transitional'' applicants, whether SBS Dealer or major security-based swap participant, there would be a period of time before the Last Compliance Date when the Senior Officer Certification would be either unduly burdensome for registrants (*e.g.,* a rule has been promulgated by the Commission under Section 15F of the Exchange Act, but compliance with that rule is not yet required) or inappropriate for meeting the goals of the certification (*e.g.,* the Commission has not yet adopted a significant rule under Section 15F of the Exchange Act, so the certification would not cover compliance in an important regulatory area).

To address this potential transition issue, we preliminarily believe it is appropriate to propose a conditional registration process that would permit registration without a Senior Officer Certification prior to the Last Compliance Date. This process would be available to all applicants (whether SBS Dealer or major security-based swap participant) and would, among other things, facilitate the identification of existing SBS Entities in advance of the compliance date of certain substantive requirements. Conditional registration would be effective once the Commission grants such conditional registration and would expire on the Last Compliance Date (unless conditional registration was extended pursuant to paragraphs (b) or (c) of proposed Rule 15Fb3–1). Ongoing registration of these conditionally registered SBS Entities would be conditioned on, among other things, the registrant providing the Senior Officer Certification to the Commission on or before the Last Compliance Date. As described above, fulfillment of this requirement by an SBS Entity would provide the Commission with some assurance that the SBS Entity understands and has the ability to undertake its business in compliance with the applicable requirements. Once a registrant submits its Senior Officer Certification, the Commission would consider converting its conditional registration to an ongoing registration.[17] However, whether or not a conditional registrant provides the Senior Officer Certification on or before the Last Compliance Date, the Commission would retain the flexibility to extend conditional registration for good cause.

Once the Last Compliance Date has occurred, the conditional registration process for SBS Dealers would effectively collapse into the ongoing registration process and any SBS Dealer would need to submit its Senior Officer Certification with its application (*i.e.,* after the Last Compliance Date, SBS Dealers could only apply for ongoing registration). Major securities-based swap participants could still conditionally register (as described below) because of challenges separate and apart from implementation of Section 15F of the Exchange Act.

ii. Major Security-Based Swap Participant Applicants Registering After the Last Compliance Date

As noted in the proposed definition of major security-based swap participant,[18] an entity whose security-based swap portfolio crosses established thresholds in a fiscal quarter would have a two-month grace period following the end of that quarter to submit a complete application for registration as a major security-based swap participant. The Commission preliminarily believes that, while there is likely to be some advance notice of an impending status change due to ongoing monitoring of portfolios in the ordinary course of business, an entity that would likely fall within the definition of a ''major security-based swap participant'' because of activities in a given fiscal quarter may not have adequate compliance systems in place within two months after the end of the triggering quarter to allow the entity to provide the Commission with a Senior Officer Certification. Therefore, the Commission proposes to conditionally register such new participants based on their filing of a complete application before the expiration of the two-month grace period, subject to a requirement that they provide a Senior Officer Certification to the Commission within four months of the submission of their complete application (*i.e.,* within six months after the end of the triggering quarter). This proposal is intended to balance the additional time a new major security-based swap participant may require to build out its compliance structure with the Commission's strong interest in having new registrants promptly comply with applicable federal securities laws. Such conditional registration would be effective once the Commission grants conditional registration and would expire four months after receipt of that application unless the firm files a Senior Officer Certification with the Commission within that time frame.

As with conditional registrations granted prior to the Last Compliance Date, once a major security-based swap participant that applies for registration after the Last Compliance Date submits its Senior Officer Certification, the Commission could consider converting its conditional registration to an ongoing registration, as described below. In addition, whether or not a conditionally registered major security-based swap participant provides the Senior Officer Certification within four months after submitting its application, the Commission retains the flexibility to extend the conditional registration for good cause.

The Commission notes that the conditional registration mechanism for major security-based swap participants would remain in place even after the Last Compliance Date (*i.e.,* major security-based swap participants could always avail themselves of a conditional registration period).

2. Ongoing Registration

The proposed rules would provide for the ongoing registration of all conditionally registered SBS Entities following their fulfillment of the applicable requirements, as well as SBS

[15] The term ''Last Compliance Date'' is defined in proposed Rule 15Fb2–1(e). The Commission anticipates that the Last Compliance Date would be clearly stated in the relevant adopting release and prominently announced on the Commission's Web site.

[16] The Commission notes that, regardless of the timing of the Last Compliance Date, a registered SBS Entity would be required to comply with certain self-operative provisions in Exchange Act Section 15F upon registration (conditional or otherwise), absent further Commission action. *See* Effective Date Release, *supra* note 8.

[17] Submission of a Senior Officer Certification also would toll expiration of the SBS Entity's conditional registration for thirty days, if necessary to facilitate the Commission's review, or such longer period as the Commission finds for good cause (*see* proposed Rule 15Fb3–1).

[18] *See* Intermediary Definitions Release, *supra* note 5, at 103.

Dealers registering with the Commission after the Last Compliance Date (and, therefore would not be required to conditionally register). As described above, an SBS Entity would need to submit both a completed application and a Senior Officer Certification to obtain ongoing registration. An SBS Entity that was conditionally registered would not be required to submit a new application. At the time it applies for ongoing registration, however, the SBS Entity would be required to amend its application to correct any information that has become inaccurate for any reason.

The Commission would grant ongoing registration if it finds that the requirements of Section 15F(b) of the Exchange Act are satisfied, but the Commission would institute proceedings to determine whether the Commission should deny ongoing registration if the Commission does not make such a finding, if it finds that the applicant is subject to a statutory disqualification, or if it is aware of inaccurate statements in the application or certification.[19] The Commission would notify the entity electronically when ongoing registration is granted, and would make information regarding registration status publicly available. Pursuant to proposed Rule 15Fb3–1(a), ongoing registration would be effective until any cancellation, revocation or withdrawal of the registration or on any other event the Commission determines should trigger expiration.

3. Solicitation of Comments on the General Approach to the SBS Entity Registration Process

We request comment on this approach to the SBS Entity registration process.

Q–1. Should the Commission model the registration regime applicable to SBS Entities more closely after one or more other registration regimes regulated by the Commission (*e.g.,* securities exchanges or associations,[20] clearing agencies,[21] or investment advisers [22]), self regulatory organizations (''SROs''),[23] or other regulators? [24] If so, please describe which model should be followed and why.

Q–2. Does the conditional process for SBS Entity registration outlined above provide a practicable solution to the potential timing issues raised by the implementation of Section 15F of the Exchange Act? Are there additional or alternative conditions or mechanisms that would be appropriate for addressing those issues?

Q–3. Does the conditional process for major security-based swap participant registration outlined above provide a practicable solution to the potential timing issues raised by the look-back features in the proposed definition of ''major security-based swap participant'' definition? Are there additional or alternative conditions or mechanisms that would be appropriate for addressing those issues?

Q–4. Should the Commission delay all registrations until the Last Compliance Date instead of adopting a conditional registration process? Why or why not?

Q–5. Should the Commission consider granting conditional registration automatically based on the receipt of a completed application or some other or additional documents? If so, why?

Q–6. Should the Commission notify the SBS Entity that it has granted conditional or ongoing registration prior to making the SBS Entity's registration status publicly available? If so, why and what should be the timing difference?

Q–7. Should the Commission provide additional guidance regarding the process for institution of proceedings? For instance, should the Commission include timeframes within which proceedings would be instituted and/or a decision to grant or deny registration based on those proceedings should be provided (*e.g.,* Exchange Act Section 15(b)(1))? If so, what timeframes or other guidance would be appropriate and why?

Q–8. Is it appropriate to seek to minimize duplication by permitting registered intermediaries to follow a registration process that uses simplified forms? Why or why not?

Q–9. Should these intermediaries be required to file their existing registration forms with the Commission as part of this process, or should they be required to authorize the Commission to obtain access to those forms at the relevant repository (*e.g.,* the Financial Industry Regulatory Authority (''FINRA'') or the National Futures Association (''NFA''))?

Q–10. Should SBS Entities be afforded more time (beyond the Last Compliance Date) to prepare and provide their Senior Officer Certification? Why or why not? If so, how much additional time would be appropriate?

Q–11. Should major security-based swap participants that file applications after the Last Compliance Date be afforded more or less than four months to prepare and provide their Senior Officer Certification? Why or why not?

Q–12. What would be the advantages and disadvantages and costs and benefits of the Commission adopting an approach to SBS Entity registration that encompasses a more substantive inquiry concerning the business of an applicant? What would be the impact on market participants, including investors?

Q–13. Are there additional or alternative mechanisms that the Commission could employ to better protect markets and market participants and minimize the burden on registrants while meeting the regulatory objectives of a registration scheme for SBS Entities?

Commenters are encouraged to identify other possible solutions that would allow the Commission to promptly review and consider SBS Entity registration applications so they would not experience undue interruptions in business while also providing the Commission reasonable assurance that they have the ability to carry out their business and are able to comply with applicable federal securities laws.

II. Proposed Exchange Act Rules and Forms

A. Registration Application and Amendment

1. Proposed Rule 15Fb2–1

Proposed Rule 15Fb2–1 would set forth the method through which SBS Entities could apply for registration with the Commission. Essentially, the forms and process for filing applications and other documents electronically with the Commission would be identical for SBS Dealers and major security-based swap participants. This proposed rule also would describe the timing of such filings and the standard of review applied by the Commission in determining whether to grant or deny registration, which may differ slightly for SBS Dealers and major security-based swap participants, depending on the type of registration the firm is seeking. While it may be appropriate for certain rules applicable to SBS Dealers to differ from those applicable to major security-based swap participants, the Commission preliminarily believes that

[19] Such proceedings would include notice of the grounds for denial under consideration and opportunity for hearing, and that at the conclusion of such proceedings, the Commission would grant or deny such registration. *See* proposed Rule 15Fb2–1(d)(2).

[20] 15 U.S.C. 78f(b)(1) and 15 U.S.C. 78o–3(b)(1)–(2).

[21] 15 U.S.C. 78q–1(b)(3)(A).

[22] 15 U.S.C. 80b–3(c).

[23] *See, e.g.,* National Association of Securities Dealers Rules 1013 and 1014; Chicago Board Options Exchange Rules 3.5(c)(ii), 8.83(b), and 44.12(b); and NYSE Arca Rule 7.22(a).

[24] *See, e.g.,* National Futures Association Registration Rules (which can be found at *http://www.nfa.futures.org/nfamanual/NFAManualTOC.aspx?Section=8*).

the registration rules and forms need not differ significantly because the information the Commission would need to determine whether registration is appropriate is similar for both types of entities.

i. Form of Application

Paragraph (a) of proposed Rule 15Fb2–1 would provide that an SBS Entity would apply for registration electronically on Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, in accordance with the instructions to the form. In general:

- SBS Entities registered or registering with the Commission as broker-dealers would apply for registration using Form SBSE–BD;
- SBS Entities registered or registering with the CFTC as swap dealers or major swap participants (and not also registered or registering with the Commission as broker-dealers) would apply for registration using Form SBSE–A; and
- SBS Entities that do not fit either of the above categories would apply for registration using Form SBSE.

Specifics regarding each of these forms and their differences and uses are discussed in more detail below. These forms would be used to register with the Commission regardless of whether an SBS Entity was applying for conditional or ongoing registration.

The Commission solicits comment on the use of forms to register with the Commission.

Q–14. Would an alternative mechanism be more appropriate for registering SBS Entities? If so, which one and why?

Q–15. Should the registration forms differ based on whether the entity is registering as an SBS Dealer or major security-based swap participant? If so, how?

ii. Senior Officer Certification

Paragraph (b) of proposed Rule 15Fb2–1 would require that each SBS Entity provide the Commission with a certification on Form SBSE–C to facilitate the Commission's review of each firm's application for ongoing registration. A knowledgeable senior officer of the SBS Entity would be required to sign the certification,[25] which is designed to provide the Commission with the applicant's assurance that the applicant has the capabilities necessary to operate as an SBS Entity and, therefore, that the applicant should qualify for registration under Exchange Act Section 15F(b). Accordingly, the certification would assist the Commission in determining whether to grant the SBS Entity ongoing registration. Such an informed determination, based in part on the certification, will help the Commission maintain orderly and efficient markets and protect investors by helping to ensure that the Commission only grants registration to SBS Entities that can attest that they possess the operational, financial, and compliance capabilities to conduct business as an SBS Entity. Specifically, under the proposal, each SBS Entity must have a senior officer certify that, after due inquiry, he or she has reasonably determined that the SBS Entity has the operational,[26] financial,[27] and compliance[28] capabilities to act as an SBS Entity. In addition, the proposal would require that the senior officer certify that he or she has documented the process by which he or she reached that determination. While the Commission has required regulated entities to provide a certification in other contexts,[29] a requirement that an applicant or regulated entity certify as to its ability to engage in the business it would be registered to do is relatively new.[30]

The Commission preliminarily believes that receipt of a Senior Officer Certification would provide assurances to the Commission that each SBS Entity has the requisite capabilities to operate in the capacity for which it seeks registration. The Senior Officer Certification is designed to require a deliberate and thoughtful self-assessment by each SBS Entity of its capabilities and thus should provide assurances to potential investors, customers of, and counterparties to an SBS Entity that the SBS Entity has the requisite capabilities to act in that capacity. Further, this Senior Officer Certification requirement could help prevent disorderly and unstable markets that could result from the failure of a registered SBS Entity that lacks the requisite capabilities to operate its business in a registered capacity. The Senior Officer Certification also may enhance market participants' ability to assess the counterparty credit risk associated with a particular SBS Entity counterparty. In this way, the Senior Officer Certification should help to protect investors and other market participants from SBS Entities that are not competent to engage in that business, lack the financial resources to do so, or are unable or unwilling to comply with applicable law. The Commission thus preliminarily believes that the Senior Officer Certification could help the efficient functioning of the market and enhance the confidence of investors and other market participants.

The Senior Officer Certification requirement, in other words, is meant to address many of the same considerations that arise during the in-depth review by the Commission and its staff, or, in some cases, SROs, prior to

[25] In accordance with Proposed Rule 15Fb1–1(b), the SBS Entity will need to maintain a manually signed copy of this certification as part of its books and records until at least three years after the certification was filed with the Commission.

[26] The concept of ''operational capability'' can be an important regulatory consideration because an SBS Entity with insufficient infrastructure, technology, and human resources presents operational risks that may adversely impact its counterparties and the broader market—*e.g.,* if transactions are inaccurately documented, not documented at all, or if insufficient margin is collected. *See Trade Acknowledgment and Verification of Security-Based Swap Transactions,* Exchange Act Release No. 63727 (Jan. 14, 2011), 76 FR 3859, at 3860 (Jan. 21, 2011) (proposing release) (discussing the recognition by various parties of the importance of operational infrastructure in the over-the-counter derivatives market) (the ''Trade Acknowledgement Proposing Release''). The Commission expects that a key foundation for the Senior Officer Certification would be the capability of an SBS Entity to comply with the obligations that would be imposed by the Trade Acknowledgment Proposing Release, if adopted, other legal obligations applicable to the operations of an SBS Entity, and the capability of the SBS Entity to conduct its business as represented in the SBS Entity's application for ongoing registration.

[27] The concept of ''financial capability'' can be an important regulatory consideration because of, among other things, the role adequate financing plays in protecting an SBS Entity's counterparties and the broader market by ensuring that the SBS Entity has sufficient working capital and liquidity for its security-based swap business consistent with regulatory requirements and as needed to respond to market conditions. The Commission will separately propose capital rules for SBS Entities, as required by the Dodd Frank Act. 15 U.S.C. 78o–10(e). The Commission expects that the capability of an SBS Entity to comply with these obligations, if adopted, would form a key foundation for the Senior Officer Certification.

[28] The concept of ''compliance capability'' can be an important regulatory consideration because of, among other things, the wholesale creation of a new regulatory regime for security-based swaps under the Dodd-Frank Act. For example, in proposing business conduct rules for SBS Entities, the Commission proposed to require that each SBS Entity ''[establish, maintain, and enforce] written policies and procedures addressing the supervision of the types of security-based swap business in which the [SBS Entity] is engaged that are reasonably designed to achieve compliance with applicable securities laws and the rules and regulations thereunder.'' *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Release No. 64766 (Jun. 29, 2011), 76 FR 42396, (Jul. 18, 2011), *as corrected by* Exchange Act Release No. 64766, 76 FR 46668 (Aug. 3, 2011) (proposing release). The Commission expects that development and implementation of such a compliance regime, if adopted, would serve as a key foundation for the Senior Officer Certification.

[29] *See, e.g.,* 17 CFR 240.15c3–5, 17 CFR 240.13a–14, and 17 CFR 270.30a–2.

[30] *See, e.g., Registration of Municipal Advisors,* Exchange Act Release No. 63576 (Dec. 20, 2010), 76 FR 824, (Jan. 6, 2011) (proposing release) (the ''Registration of Municipal Advisors Proposing Release'').

granting registration to certain applicants.[31] For example, under Sections 6(b) and 19(a) of the Exchange Act, an exchange may not be registered unless the Commission finds that the exchange ''is so organized and has the capacity to be able to carry out the purposes of the Exchange Act and to comply, and [* * *] to enforce compliance by its members and persons associated with its members, with the provisions of [the Exchange Act], the rules and regulations thereunder, and the rules of the exchange.'' [32] Similarly, under Section 17A of the Exchange Act, a clearing agency may not be registered unless the Commission finds that the agency ''has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of [the Exchange Act] and the rules and regulations thereunder, [and] to enforce [* * *] compliance by its participants with the rules of the clearing agency, and to carry out the purposes of this section.'' [33] To this end, the Commission has published a series of standards ''that the [staff] will use in reviewing the organizations, capacities and rules of clearing agencies that currently are registered temporarily with the Commission and of clearing agencies that may apply for registration * * *.'' [34] Broker-dealers that register with the Commission under Section 15(b) also must become a member of an SRO, and SRO rules generally incorporate membership application procedures that include, among other things, assessments by the SRO of the broker-dealer's operational, financial, and compliance capabilities.[35]

At this time, although we provide guidance above regarding the factors a senior officer would use to serve as a foundation for the Senior Officer Certification,[36] we are not proposing a specific definition of the term ''operational, financial and compliance capabilities.'' Instead, we request comment regarding whether and how that phrase should be further defined or interpreted. The Commission recognizes that whether an SBS Entity has the operational, financial and compliance capabilities to act as an SBS Entity likely will depend on its particular facts and circumstances, including, among other things: the scope and nature of its security-based swap business; its other related financial and business activities; the extent to which it is subject to other registration and regulatory requirements or other supervisory oversight with respect to its activities; its relationships with, and reliance on, affiliates, service providers, and other parties; and the extent and nature of its historical involvement in security-based swap transactions. Moreover, it may be appropriate to consider the capabilities required for this certification by reference to regulatory standards. For example, attesting to capabilities might include a self-assessment of whether the SBS Entity is capable of communicating in a manner that is based on principles of fair dealing and good faith; [37] whether the SBS Entity has established all contractual or other arrangements and business relationships necessary to conduct its security-based swap business; [38] whether the SBS Entity has or has adequate plans to obtain facilities

[31] *See, e.g.,* 15 U.S.C. 78f(b)(1) (regarding registration of national securities exchanges), and 15 U.S.C. 78q–1(b)(3)(A) (regarding registration of clearing agencies). *See also* 15 U.S.C. 78o–3(b)(1) and (2) (regarding registration of national securities associations). In addition, the Commission recently proposed rules governing the registration of security-based swap data repositories (''SDRs''), security-based swap execution facilities (''SB SEFs''), security-based swap clearing agencies (''SBS CAs''), and municipal advisors that relate to potential registrants' operational, financial, and compliance capabilities. For example, the proposed registration rules for security-based swap data repositories are intended to, among other things, assure the Commission that ''an SDR is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as an SDR, comply with any applicable provision of the Federal securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of Exchange Act.'' These proposed rules may also require an SDR to file with the Commission, as a condition of registration or continued registration, a review relating to the SDR's operational capacity and ability to meet its regulatory obligations. Such review could be in the form of a report conducted by the SDR, an independent third party, or both. *Security-Based Swap Data Repository Registration, Duties, and Core Principles,* Exchange Act Release No. 63347 (Nov. 19, 2010), 75 FR 77306 (Dec. 10, 2010) (proposing release). Similarly, the proposed registration rules for security-based swap execution facilities are designed to assure the Commission that a registrant ''has adequate financial, operational, and managerial resources to discharge each responsibility of the SB SEF, as determined by the Commission.'' *Registration and Regulation of Security-Based Swap Execution Facilities,* Exchange Act Release No. 63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011) (proposing release). Among other things, these rules state in part that ''the financial resources of a SB SEF shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the SB SEF to cover its operating costs for a one year period.'' The Commission also proposed registration rules for security-based swap clearing agencies that require, among other things, registrants to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that their systems provide adequate levels of capacity, resiliency, and security. Such policies and procedures shall, at a minimum: (i) Establish reasonable current and future capacity estimates; (ii) conduct periodic capacity stress tests of critical systems to determine such systems' ability to process transactions in an accurate, timely, and efficient manner; (iii) develop and implement reasonable procedures to review and keep current its system development and testing methodology; (iv) review the vulnerability of its systems and data center computer operations to internal and external threats, physical hazards, and natural disasters; and (v) establish adequate contingency and disaster recovery plans. These rules further require that clearing agencies that provide central counterparty (''CCP'') services need to have a qualified person conduct a review of models that are used to set margin levels, along with related parameters and assumptions, in order to assure that the models perform in a manner that facilitates prompt and accurate clearance and settlement of transactions. In determining whether a person is qualified to conduct the model validation, clearing agencies providing CCP services could consider several factors, including the person's experience in validating margin models, expertise in risk management generally, and understanding of the clearing agency's operations and procedures. *Clearing Agency Standards for Operation and Governance,* Exchange Act Release No. 64017 (Mar. 3, 2011), 76 FR 14472 (Mar. 16, 2011) (proposing release) (the ''Clearing Agency Standards Proposing Release''). Finally, the proposed registration rules for municipal advisors would require municipal advisors to certify that they have: ''1) sufficient qualifications, training, experience, and competence to effectively carry out their designated functions; 2) met, or within any applicable timeframe will meet, such standards of training experience, and competence, and such other qualifications, including testing, for a municipal advisor, required by the Commission, the MSRB or any other relevant self-regulatory organization; and 3) the necessary understanding of, and ability to comply with, all applicable regulatory obligations.'' Registration of Municipal Advisors Proposing Release, *supra* note 30.

[32] 15 U.S.C. 78f(b)(1).

[33] 15 U.S.C. 78q–1(b)(3)(A).

[34] The Commission has established a series of standards ''that the [staff] will use in reviewing the organizations, *capacities* and rules of clearing agencies that currently are registered temporarily with the Commission and of clearing agencies that may apply for registration * * *.'' *Regulation of Clearing Agencies,* Exchange Act Release No. 16900 (Jun. 17. 1980), 45 FR 41920 (June 23, 1980) (emphasis added). *See also* the Clearing Agency Standards Proposing Release, *supra* note 30.

[35] *See, e.g.,* NASD Rules 1013 and 1014 (membership application review requires a new broker-dealer to, among other things, file a detailed business plan, explain its sources of funding, describe the educational background and experience of its personnel, and undergo a membership interview). Existing FINRA members that wish to enter into a materially new business, such as dealing in security-based swaps, must also file an application to do so, and those applications are similarly reviewed to determine whether the broker-dealer has the requisite capabilities to conduct the new business. NASD Rule 1017. Exchange Act Rule 15b2–2 requires that a new broker-dealer be examined within six months to evaluate whether the broker-dealer is operating in conformity with applicable financial responsibility rules and again within twelve months to evaluate whether it is also operating in conformity with all other applicable provisions of the Exchange Act and rules thereunder. 17 CFR 240.15b2–2(b) & (c).

[36] *See supra* notes 26–28.

[37] *See* Section 15F(h)(3)(C) (providing that business conduct requirements adopted by the Commission shall establish a duty to communicate in a manner ''based on principles of fair dealing and good faith'').

[38] *See* NASD Rule 1014(a)(4).

that are sufficient for its operations;[39] and whether the SBS Entity is capable of maintaining a level of capital that is adequate to support the SBS Entity's intended business operations on a continuing basis.[40]

The proposed rules would require that a senior officer of an SBS Entity certify that he or she has reasonably determined that, after ''due inquiry,'' the security-based swap dealer or major security-based swap participant has the operational, financial, and compliance capabilities to act as an SBS Entity.[41] We believe it is important to make explicit that the senior officer is obligated under the rule to conduct some inquiry to form his or her reasonable determination. However, the Commission does not propose to prescribe any single method a senior officer must use to gain an appropriate level of comfort and information before signing the Senior Officer Certification. In other words, different SBS Entities may utilize different processes to provide a basis for a senior officer's reasonable determination that the SBS Entity has the requisite capabilities.[42]

As described in Part I above, the proposed registration process would include conditional and ongoing registration. Pursuant to subparagraph (b)(1)(i) and (ii), respectively, of proposed Rule 15Fb2–1, SBS Entities that register conditionally during the transitional period would need to submit the Senior Officer Certification on or before the Last Compliance Date and major security-based swap participants that file an application after the Last Compliance Date would need to submit the certification within four months after filing an application. The Commission preliminarily believes that these timeframes would provide senior officers of conditionally registered SBS Entities sufficient time to determine that they are able to provide the relevant certification. Pursuant to subparagraph (b)(2), an SBS Dealer that files an application after the Last Compliance Date would need to submit the Senior Officer Certification with its application.

The Commission requests comment on all aspects of the proposed requirement for SBS Entities to provide the Commission with a Senior Officer Certification on Form SBSE–C as specified in proposed Rule 15Fb2–1(b), and on the registration process generally. With respect to this certification, the Commission is interested in commenters responses to the following questions, and also to questions Q–54. through Q–61. relating to Additional Registration Considerations.

Q–16. Would the Senior Officer Certification requirement provide sufficient assurance that each SBS Entity has the necessary capabilities to act as a registered SBS Entity? Why or why not? Would it provide sufficient assurance that SBS Entities have established controls to ensure compliance with all applicable securities law requirements? Why or why not?

Q–17. Would the Senior Officer Certification provide sufficient assurance to customers of and counterparties to SBS Entities, investors, eligible contract participants and other market participants that new SBS Entities have the requisite capabilities to act as SBS Entities? Why or why not?

Q–18. Should the Commission only require SBS Dealers, and not major security-based swap participants, to provide a Senior Officer Certification? Why or why not? What would be the comparative advantages, disadvantages, costs and/or benefits of such an approach?

Q–19. Alternatively, should the form of Senior Officer Certification an SBS Entity must file be driven by whether the entity is an SBS Dealer or major security-based swap participant? For instance, should an SBS Dealer be required to certify to its capabilities and a major security-based swap participant be required to certify to its policies and procedures? If so, what form of Senior Officer Certification should SBS Dealers be required to file and which form of Senior Officer Certification should major security-based swap participants be required to file? What would be the comparative advantages, disadvantages, costs and/or benefits of requiring dealers and participants to certify using different certification language?

Q–20. What alternative forms of Senior Officer Certification should be considered, if any? For example, should the proposed Senior Officer Certification use the language that the Commission proposed with respect to the certification to be made by municipal advisors?[43] Why or why not? What would be the comparative advantages, disadvantages, costs and/or benefits of using the same certification language the Commission has proposed for use by municipal advisors as opposed to the language proposed?

Q–21. The concept of developing and implementing written policies and procedures has often been used by the Commission to further its regulatory objectives. Should the Senior Officer Certification instead require that a senior officer certify that ''to the best of his or her knowledge, after due inquiry, the security-based swap dealer or major security-based swap participant has developed and implemented written policies and procedures reasonably designed to prevent violation of federal securities laws, the rules thereunder, and applicable self-regulatory organization rules?''[44] Why or why not? What would be the impact of the Senior Officer Certification if it did not specifically address operational capability? What would be the comparative advantages, disadvantages, costs and/or benefits of using this language as opposed to the language proposed?

Q–22. Should the Commission more specifically define the term ''operational, financial, and compliance capabilities''? If so, how should this term be defined to, among other things, provide greater certainty to market participants about the basis for providing the Senior Officer Certification?

Q–23. Should the Commission specifically define the term ''capability?'' Should the Commission, for example, define the term ''capability,'' as it relates to the financial, operational, and compliance functions of an SBS Entity, as ''having the necessary ability or qualities''? Why or why not? Should the Commission define the term capability in some other way? If so, how and why?

Q–24. Alternatively, should the Commission simply adopt the Webster's New World Dictionary definition which

[39] *See* NASD Rule 1014(a)(5).

[40] *See* NASD Rule 1014(a)(7).

[41] This certification must be accurate as of the date the certification is filed with the Commission. An SBS Entity would not be required to have a senior officer update the certification after the SBS Entity has been approved for ongoing registration.

[42] For example, in satisfying other certification requirements some SBS Entities may use a sub-certification process whereby the senior officer will not certify a firm-wide statement unless and until other persons responsible for certain activities in turn certify to the senior officer that the standard has been met, while other SBS Entities may use an internal or external audit-type process whereby a senior officer may choose to employ a third party to review an area subject to a firm-wide certification before submitting the certification.

[43] *See supra* note 31, regarding the certification the Commission proposed for use by municipal advisors in the Registration of Municipal Advisors Proposing Release.

[44] *See, e.g.,* Section 15(g) of the Exchange Act (requiring that broker-dealers establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information). 15 U.S.C. 78o(g). *See also* Rule 206(4)–7 of the Investment Advisers Act of 1940 (the ''Advisers Act'') (requiring that investment advisers must adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder). 17 CFR 275.206(4)–7.

defines the term ''capability'' to mean ''the quality of being capable; practical ability,'' and defines the term ''capable'' to mean, among other things, ''having ability; able; skilled; competent —capable of; having the ability or qualities necessary for; able or ready to?'' [45] Why or why not? Should the Commission instead adopt some other dictionary definition? If so, what other dictionary definition should be used and why? Alternatively, should the Commission define the term capability in some other way? If so, how and why?

Q–25. Should the Commission determine that a firm may rely on the establishment, maintenance and enforcement of written policies and procedures by an SBS Entity that are reasonably designed to prevent violation of federal securities laws, the rules thereunder, and applicable self-regulatory organization rules as a basis for a senior officer to certify that an SBS Entity has the appropriate ''compliance capability?'' Why or why not?

Q–26. Should the Commission determine that a firm may rely on the establishment, maintenance and enforcement of written policies and procedures by an SBS Entity that are reasonably designed to assure that the SBS Entity complies with applicable capital and margin requirements as a basis for a senior officer to certify that an SBS Entity has the appropriate ''financial capability?'' Why or why not?

Q–27. If the Commission does not specifically define what would constitute operational, financial, and compliance capabilities, will there still be a sufficient basis for SBS Entities and/or their senior officers to provide the Commission with a Senior Officer Certification? Why or why not? Would any potential uncertainty arising from the decision not to define at this time the terms ''operational, financial, and compliance capabilities'' and ''capabilities'' cause difficulties for SBS Entities seeking to register on an ongoing basis? If so, please describe.

Q–28. Should SBS Entities be required to provide a Senior Officer Certification as to any capabilities in addition to the three specified? If so, what other capabilities and why? Alternatively, should any of the capabilities be eliminated from the Senior Officer Certification? If so, which one(s) and why? For example, should the certification relating to an SBS Entity's capabilities be confined to operational capability given the regulatory imperative to comply with applicable regulations (including capital rules)? What would be the comparative advantages, disadvantages, costs and/or benefits of adding or eliminating such capabilities?

Q–29. In addition to, or in lieu of the Senior Officer Certification requirement, should the Commission utilize an approach to demonstration of capabilities similar to the one we use to register national securities exchanges under Exchange Act Section 6(b)(1) [46] (which requires that an exchange have the ''capacity to be able to carry out the purposes of [the Exchange Act * * *], the rules and regulations thereunder'')? Would such a standard provide additional clarity as to the capabilities to be required of registrants? What would be the advantages and disadvantages and the costs and benefits of such an alternative process?

Q–30. Should the Commission instead utilize an approach to demonstration of capabilities similar to the one we use to register clearing agencies under Exchange Act Section 17A(b)(3)(A) [47] (which requires that an exchange have the ''capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of [the Exchange Act] and the rules and regulations thereunder, [and] to enforce [* * *] compliance by its participants with the rules of the clearing agency, and to carry out the purposes of this section'')? Would such a standard provide additional clarity as to the capabilities to be required of registrants? What would be the advantages and disadvantages and the costs and benefits of such an alternative process?

Q–31. Should the form of Senior Officer Certification an SBS Entity must file be driven by whether the entity is, or is not, already registered with the Commission as a broker-dealer or with the CFTC as a swap dealer or major swap participant? Why or why not? If so, what forms of certification would be appropriate for use by SBS Entities that are already registered with one of the Commission or the CFTC? What would be the comparative advantages, disadvantages, costs and/or benefits of this approach?

Q–32. Should SBS Entities already registered with the Commission as a broker-dealer or with the CFTC as a swap dealer or major swap participant be excepted from the requirement to file a Senior Officer Certification? Why or why not? What would be the comparative advantages, disadvantages, costs and/or benefits of this approach?

Q–33. If an SBS Entity were also registered with the Commission as a broker-dealer and an SRO were to conduct a ''material change in business review'' of the SBS Entity's security-based swap business, should the SBS Entity be permitted to rely on the SRO's review and approval of that new business as a basis for its Senior Officer Certification? Would the form of Senior Officer Certification affect the SBS Entity's ability to rely on such a review and approval? If so, how and why? Given that SBS Entities that are also registered as broker-dealers would be required by existing SRO rules to undergo a material change in business review, are there any advantages and disadvantages or costs and benefits associated with reliance on an SRO ''material change in business review'' and approval as a basis for its Senior Officer Certification?

Q–34. Similarly, if an SBS Entity were also involved in swap activity, could that entity use any CFTC, NFA or prudential regulatory agency's review of its swap business to inform its Senior Officer Certification to the Commission? Would the form of Senior Officer Certification affect the SBS Entity's ability to rely on such a review and approval? If so, how and why? Are there any advantages and disadvantages or costs and benefits associated with reliance on a CFTC, NFA or prudential regulatory agency's review of its swap business as a basis for its Senior Officer Certification?

Q–35. Would the Senior Officer Certification requirement effectively require an SBS Entity to employ a third party's services to examine or confirm conclusions required for the certification? Why or why not? If third party services were effectively required, what would be the advantages and disadvantages and costs and benefits of such third party services?

Q–36. Should we include the due inquiry requirement in the rule? Should we instead specify particular steps a senior officer must take to determine whether the SBS Entity has the requisite capabilities?

Q–37. Should the senior officer of an SBS Entity be required to disclose on Form SBSE–C or elsewhere, the nature of the ''due inquiry'' he or she performed before signing Form SBSE–C and his or her resulting findings and conclusions? Why or why not?

Q–38. Should the Commission define its expectations with respect to the ''due inquiry'' a senior officer should perform

[45] *Websters New World Dictionary* 110 (2nd concise ed. 1975).

[46] *See supra* note 32.

[47] *See supra* note 33.

before signing Form SBSE–C? If so, what should be included as part of a senior officer's ''due inquiry?'' Should ''due inquiry'' differ depending on whether the SBS Entity is an SBS Dealer or a major security-based swap participant? Please explain.

Q–39. Is the timeframe within which the proposed Senior Officer Certification would need to be filed appropriate? If not, should the timeframe be shorter or longer and why?

Q–40. Should the Commission eliminate the requirement that a senior officer certify that he or she has documented the process by which he or she reached his or her determination regarding the SBS Entity's capacity? Why or why not? Should the Commission instead simply require that a senior officer document this process and require that the SBS Entity maintain those documents as part of its books and records? Would a senior officer believe that he or she may be second-guessed if, among other circumstances, the senior officer certifies as to an SBS Entity's capabilities but does not retain documentation demonstrating how he or she reached this determination?

iii. Electronic Filing

Paragraph (c) of proposed Rule 15Fb2–1 would address the manner in which the application, certification, and any additional registration documents would be filed with the Commission. Proposed paragraph (c)(1) would require applications, certifications, and any additional documents to be filed electronically. The Commission anticipates that the EDGAR system will be expanded to facilitate registration of SBS Entities because it likely would provide the most cost-effective solution.[48]

Proposed paragraph (c)(2) of proposed Rule 15Fb2–1 would specify the effective date of filing of applications and certifications submitted pursuant to the paragraphs (a) and (b). Subparagraph (c)(2)(i) would provide that an SBS Entity's application submitted pursuant to paragraph (a) would be considered filed only when a complete Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, and all required additional documents are filed with the Commission or its designee. Subparagraph (c)(2)(ii) would provide that an SBS Entity's certification submitted pursuant to paragraph (b) would be considered filed when a complete Form SBSE–C is filed electronically with the Commission or its designee.

If a technological means to facilitate receipt and retention of applications is not functional by the time final rules are adopted, proposed temporary Rule 15Fb2–2T, described more fully below, would require SBS Entities to file applications and additional documents in paper form.

The Commission requests comment on the proposed method for receiving applications.

Q–41. Should the Commission not require electronic submission of applications? If not, why?

Q–41. Instead of expanding the EDGAR system to receive SBS Entity applications for registration, should the Commission utilize some other system? Please explain. What would be the comparative advantages and disadvantages and costs and benefits of utilizing a system other than EDGAR?

Q–43. What would be the advantages and disadvantages and costs and benefits to prospective applicants of expansion of the EDGAR system to receive SBS Entity applications for registration, especially with respect to the varying levels of familiarity that they may have with this system?

Q–44. Should the Commission designate another entity to facilitate the electronic receipt of applications? Why or why not? If so, what types of entities should we consider?

Q–45. What other issues, if any, should the Commission consider in connection with electronic filing?

iv. Standards for Granting or Denying Applications

Paragraph (d) of proposed Rule 15Fb2–1 would provide that the Commission may grant or deny an application for registration, and would set forth the standards the Commission would use to make that determination. The grant or denial of a conditional registration would depend principally on the completeness of an application, whether the applicant is subject to a statutory disqualification, and whether the Commission is aware of inaccurate statements in the application. The grant or denial of an ongoing registration would also require that the Commission find that the requirements of Exchange Act Section 15F(b) are satisfied. As noted in Part I above, conditionally registered SBS Entities would need to obtain ongoing registration to continue doing a security-based swap business once their conditional registration expires.[49]

When considering an application for conditional registration, proposed paragraph 15Fb2–1(d)(1) provides that the Commission would grant such registration if it finds that the firm's application is complete, except that the Commission may institute proceedings to determine whether to deny conditional registration if it finds that the applicant is subject to a statutory disqualification or the Commission is aware of inaccurate statements in the application. Such proceedings would include notice of the grounds for denial under consideration and opportunity for hearing. At the conclusion of such proceedings, the Commission would grant or deny such registration.

Paragraph (d)(2) would allow the Commission to grant ongoing registration to an SBS Entity. It is contemplated that ongoing registration would be sought by firms that have been conditionally registered with the Commission, as well as by new firms entering the marketplace that have not been conditionally registered (*e.g.,* an SBS Dealer seeking registration after the Last Compliance Date). Paragraph (d)(2) would specify that the Commission would grant ongoing registration based on a firm's application and certification. Proposed paragraph (d)(2) would provide that if the Commission granted conditional registration to an SBS Entity, the Commission could grant or deny ongoing registration based on the original application submitted by the SBS Entity, as amended,[50] and the certification submitted to the Commission by the SBS Entity pursuant to paragraph (b). When considering any

[48] To the extent the Commission utilizes the EDGAR system to facilitate registration of SBS Entities, applicants would need to utilize the EDGAR Filer Manual (as defined in 17 CFR 232.11) to facilitate their filing of applications electronically. The EDGAR Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Generally, entities filing documents in electronic format through the EDGAR system must comply with the applicable provisions of the EDGAR Filer Manual in order to assure the timely acceptance and processing of those filings.

[49] Proposed Rule 15Fb3–1(b)(1) would provide that conditional registrations granted pursuant to paragraph (d)(1) of Proposed Rule 15Fb2–1 would expire on the Last Compliance Date for SBS Entities that filed a complete application before the Last Compliance Date, unless the SBS Entity files with the Commission a certification on Form SBSE–C or the Commission extends conditional registration for good cause. Proposed Rule 15Fb3–1(b)(2) would provide that conditional registrations granted pursuant to paragraph (d)(1) of Proposed Rule 15Fb2–1 would expire four months after a major security-based swap participant files a complete application, if it filed such application after the Last Compliance Date, unless the major security-based swap participant files with the Commission a certification on Form SBSE–C. In both cases, if the Senior Officer Certification is filed within the given timeframe, conditional registration is extended by 30 days to allow the Commission time to determine whether to grant or deny ongoing registration.

[50] The SBS Entity may have amended its application to address changes that may have occurred in the intervening period between the date the application was originally filed and the date the Commission evaluates whether ongoing registration should be granted.

application for ongoing registration, Rule 15Fb2–1(d)(2) would provide that the Commission would grant registration if it finds that the requirements of Exchange Act Section 15F(b) are satisfied, except that the Commission may institute proceedings to determine whether ongoing registration should be denied if it does not make such finding or if it finds that the applicant is subject to a statutory disqualification or the Commission is aware of inaccurate statements in the application or certification. Such proceedings would include notice of the grounds for denial under consideration and opportunity for hearing, and that at the conclusion of such proceedings, the Commission would grant or deny such registration.

As discussed above, the Commission would notify the entity electronically when conditional or ongoing registration is granted, and would make information regarding registration status publicly available.

The Commission requests comment on these proposed standards of review for granting or denying registration in proposed Rule 15Fb2–1(d).

Q–46. Should the Commission consider using different standards of review to grant conditional registration to SBS Entities who apply before the Last Compliance Date than it uses for major security-based swap participants that apply for conditional registration after the Last Compliance Date?

Q–47. Would the standard requiring denial of an application if the applicant is subject to statutory disqualification cause undue hardship for any possible applicants? If so, how many applicants are likely to be affected? Should this standard be refined or eliminated? If applicants subject to statutory disqualification should be allowed to register, should they be subject to any additional requirements? Please explain.

Q–48. Should the Commission consider broader or more limited standards for granting or denying conditional registration? If so, please describe the standard that should be used and the reasons why it would be more appropriate than the standard proposed.

Q–49. Should the Commission consider using a different standard of review to grant ongoing registration?

Q–50. Should the Commission consider broader or more limited standards for granting or denying ongoing registration? If so, please describe the standard that should be used for granting or denying ongoing registration and the reasons why it would be more appropriate than the standard proposed.

Q–51. Should the Commission staff base its decision only on a review of a firm's application (including any additional documents) and certification or should an on-site examination or some other type of review be considered? If so, what would be the appropriate scope and timing of such a review?

Q–52. Is there a need to lengthen or shorten the proposed timeframes provided for the effectiveness of conditional registration in paragraph (d)(1)? If so, how long should they be?

Q–53. Should the Commission provide additional guidance regarding the process for institution of proceedings? For instance, should the Commission include timeframes within which proceedings would be instituted and/or a decision to grant or deny registration based on those proceedings should be provided (*e.g.,* Exchange Act Section 15(b)(1))? If so, what timeframes or other guidance and why?

v. Request for Comment on Additional Registration Considerations

The Commission requests comment on what, if any, alternative approaches should be considered to meet the Commission's regulatory objectives in the registration process for SBS Entities and how any such alternative approaches would compare to the current proposal.[51] Any such comparison should describe the relative advantages and disadvantages of each alternative, as well as their relative costs and benefits.

Q–54. Should the Commission not adopt a Senior Officer Certification requirement, and instead seek to satisfy itself during the registration process, based on documents the SBS Entity may be able to provide to the Commission, that the SBS Entity has the operational, financial, and/or compliance capabilities to act as an SBS Dealer or major security-based swap participant, as applicable? What would be the advantages and disadvantages and the costs and benefits of such an alternative process?

Q–55. If the Commission determines to satisfy itself during the registration process, based on documents the SBS Entity may be able to provide to the Commission, that the SBS Entity has the operational, financial, and/or compliance capabilities to act as an SBS Dealer or major security-based swap participant, as applicable, should the Commission identify which documents or categories of documents should be submitted in order to facilitate its review and/or decision? If so, what types of documents (*e.g.,* business plan, written procedures, or annual audit statements) should the Commission identify to facilitate this review and what would be the costs of obtaining or providing such documents?

Q–56. Should the Commission not adopt a Senior Officer Certification requirement, and instead require that an SBS Entity obtain and submit to the Commission an independent third-party review of its operational, financial, and compliance capabilities or its written policies and procedures before granting ongoing registration? What practical considerations—*e.g.,* identifying an appropriate independent third party, measuring the time, cost, and reliability of any such review, addressing the types of information to be shared with a third party and the factors to be considered in its review—would inform whether such a review would be appropriate? What would be the advantages and disadvantages and costs and benefits of requiring a third-party review instead of the Senior Officer Certification?

Q–57. Should the Commission adopt a Senior Officer Certification requirement, and also require that an SBS Entity employ a third party to independently review its capabilities to provide a basis for that Senior Officer Certification? What would be the advantages and disadvantages and costs and benefits of having an SBS Entity's capabilities independently reviewed? If such a review were required, who could perform such a review, what would such review entail, and should the review be submitted to the Commission along with the certification? What would be the comparative advantages, disadvantages, costs and/or benefits of requiring dealers and participants to have their capabilities independently reviewed?

Q–58. If the Commission required that SBS Entities obtain and submit an independent third-party review, what types of entities could perform such a review (*e.g.,* accountants, law firms, consulting firms) and what independence standards should apply for purposes of conducting the review? Could a review or examination by another governmental agency (*e.g.,* the Federal Reserve Board, the CFTC, the Office of the Comptroller of the Currency) or an SRO constitute an independent third party review for these purposes? If not, why? Are there any practical or legal impediments to obtaining or providing to the Commission a review from a third party

[51] As described in footnote 12 above, the Commission is presently reviewing the various standards and processes it uses to facilitate registration, and we would expect that any alternative processes suggested by commenters here would inform that review.

or a governmental agency or an SRO? If so, could these be addressed by contract or otherwise?

Q–59. Are there any other forms of oversight that could or should reinforce or replace the proposed Senior Officer Certification? What would be the comparative advantages, disadvantages, costs and/or benefits of such an approach?

Q–60. Are there other approaches to registration the Commission should consider that, in a cost-effective manner, would both fulfill the statutory mandate to protect investors, maintain fair, orderly, and efficient markets, facilitate capital formation, and ensure that the security-based swap market smoothly transitions from a generally unregulated marketplace to one that is regulated and subject to appropriate oversight? If so, please explain which ones and why.

Q–61. If the Commission were to consider an approach to registration that required something other than a Senior Officer Certification, would SBS Entities need more time to gather, obtain, or submit any documents, third party review, or other items than we have proposed for submission of the Senior Officer Certification (*i.e.,* on or before the Last Compliance Date or, for participants that apply after the Last Compliance Date, within four months after it files its completed application)? If so why or why not?

In the Intermediary Definitions Release,[52] the Commission acknowledged that the statutory definitions include a provision stating that a person may be designated as a dealer for one or more types, classes or categories of security-based swaps, or activities. Further, that release indicated that one commenter stated that the Commissions should allow a person to register as a swap dealer or SBS Dealer for only a limited set of types, classes or categories of swaps or security-based swaps.

Q–62. Should the registration process be expanded in any way to allow firms to choose whether they register in a ''full'' or ''limited'' capacity? If so, how?

Q–63. What additional information should be elicited by the proposed forms to provide the Commission with sufficient information to determine whether limited (as opposed to full) registration is appropriate? Should there be separate forms for firms to apply for limited, as opposed to full, registration? Should there instead be a separate schedule to the forms as proposed? Should the timing differ and, if so, how and why?

Q–64. Should an applicant for limited registration be required to provide the Commission with a different senior officer or other certification? If so, how should the certification differ?

Q–65. Should the Commission apply a different standard of review when considering whether to grant or deny limited registration to an applicant? If so, which one and why?

Q–66. If the Commission were to grant an SBS Entity's application for limited registration and the SBS Entity later determined that it would prefer to be fully registered, how should this transition be effected?

Please provide as much detail as possible in commenting on which of the above referenced courses of action should be pursued. Please also provide information regarding possible costs or benefits of each of these alternatives.

2. Amendments to Application Forms: Proposed Rule 15Fb2–3

Proposed Rule 15Fb2–3 would require an SBS Entity to promptly[53] amend its Form SBSE, Form SBSE–A, Form SBSE–BD, as applicable, to correct any information it determines is, or has become, inaccurate for any reason.[54] The Commission preliminarily believes this proposed Rule is necessary in order for it to have access to accurate information as part of its ongoing oversight of SBS Entities.

The Commission requests comment on all aspects of proposed Rule 15Fb2–3.

Q–67. Should the Commission only require SBS Entities to promptly update their Forms SBSE, SBSE–A, and SBSE–BD when they become ''materially'' inaccurate?

Q–68. Should SBS Entities instead be required to periodically update these forms and, if so, what would be an appropriate timeframe for updating (*e.g.,* monthly, quarterly, annually)? What may be the comparative costs and benefits of periodic updating vs. ''prompt'' updating?

Q–69. If the Commission requires SBS Entities to promptly update their Forms SBSE, SBSE–A, and SBSE–BD when they become materially inaccurate, should it also require that all information on the forms be updated periodically?

Q–70. Would it be appropriate for the Commission to require that certain information be updated more frequently than other information? If so, please describe what information should be subject to more frequent updates and why, and the frequency with which each such item should be updated.

B. Associated Persons

1. Certification

Paragraph (b)(6) of Exchange Act Section 15F generally prohibits SBS Entities from permitting any of their associated persons[55] who are subject to a ''statutory disqualification'' (as defined in Exchange Act Section 3(a)(39)) to effect or be involved in effecting[56] security-based swaps on behalf of the SBS Entity if the SBS Entity knew, or in the exercise of reasonable care should have known, of the statutory disqualification. To provide SBS Entities with a mechanism to assess their compliance with this provision, paragraph (a) of proposed Rule 15Fb6–1 would require that an SBS Entity certify, on Schedule G of Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, that no person associated with it who effects or is involved in effecting security-based swaps on its behalf is subject to statutory disqualification, as defined in Section 3(a)(39) of the Exchange Act.[57] If an associated person later becomes

[52] Intermediary Definitions Release, *supra* note 5, at 80182.

[53] For purposes of Rule 15b3–1, the Commission has interpreted the term ''promptly'' to mean within 30 days. (*In the Matter of First Guarantor Securities, Inc.,* Exchange Act Release No. 32725, 51 S.E.C. 612 (Aug. 6, 1993), which states, ''Absent extraordinary circumstances, an amendment to Form BD filed beyond thirty days from the change in information cannot be considered 'promptly' filed in accordance with Rule 15b3–1.'') We preliminarily believe this standard is also appropriate with respect to the use of this term in proposed Rule 15Fb2–3.

[54] This proposed rule is based on Exchange Act Rule 15b3–1, which is applicable to registered brokers and dealers and has worked well to assure that broker-dealers promptly amend their applications.

[55] 15 U.S.C. 78c(a)(70) generally defines the term ''person associated with'' an SBS Entity to include: (i) Any partner, officer, director, or branch manager of an SBS Entity (or any person occupying a similar status or performing similar functions); (ii) any person directly or indirectly controlling, controlled by, or under common control with an SBS Entity; or (iii) any employee of an SBS Entity. However, it generally excludes persons whose functions are solely clerical or ministerial.

[56] The Commission believes that associated persons ''involved in effecting'' security-based swaps would include, but not be limited to, persons involved in drafting and negotiating master agreements and confirmations, persons recommending security-based swap transactions to counterparties, persons on a trading desk actively involved in effecting security-based swap transactions, persons pricing security-based swap positions and managing collateral for the SBS Entity, and persons assuring that the SBS Entity's security-based swap business operates in compliance with applicable regulations. In short, the term would encompass persons engaged in functions necessary to facilitate the SBS Entity's security-based swap business.

[57] Proposed Rule 15Fb1–1(b), described below, would require each SBS Entity to maintain a manually signed copy of this certification as part of its books and records until at least three years after the certification has been replaced or is no longer effective.

statutorily disqualified, the SBS Entity would need to ensure that the associated person does not continue to effect or be involved in effecting security-based swaps on the SBS Entity's behalf and/or promptly amend its Schedule G in accordance with proposed Rule 15Fb2–3.

To support this certification requirement, paragraph (b) of proposed Rule 15Fb6–1 would require SBS Entities to obtain a questionnaire or application for employment executed by each of its associated persons that effect or are involved in effecting security-based swaps on its behalf; such questionnaire or application would serve as a basis for a background check of the associated person to determine whether the associated person is statutorily disqualified. The questionnaires or applications would be required to contain, at a minimum, the following information: (1) The associated person's name, address, social security number, Central Registration Depository (''CRD'') number (if any), Investment Adviser Registration Depository (''IARD'') number (if any), and the starting date of the associated person's employment or other association with the SBS Entity; (2) the associated person's date of birth; (3) 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; (4) 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, by any national securities exchange or national securities association, or by a foreign financial regulatory authority including any finding that the associated person was a cause of any disciplinary action or had violated any law; (5) a record of any denial, suspension, expulsion or revocation of membership or registration of any broker, dealer, SBS Dealer, or major security-based swap participant with which the associated person was associated in any capacity when such action was taken; (6) a record of any permanent or temporary injunction entered against the associated person or any broker, dealer, SBS Dealer, or major security-based swap participant with which the associated person was associated in any capacity at the time such injunction was entered; (7) a record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities (including security-based swaps), futures or commodities (including swaps), banking, insurance or real estate (including, but not limited to, acting or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing; and (8) a record of any other name or names by which the associated person has been known or which the associated person has used.

The Commission believes that it is standard in the financial services industry for firms to request this information on employment questionnaires. This information is similar to the information identified in Exchange Act Rule 17a–3(a)(12)(i) and required to be collected by broker-dealers with respect to their associated persons. Additionally, Form U–4 contains all the information needed pursuant to Exchange Act Rule 17a–3(a)(12)(i) and would fulfill the requirement to obtain a questionnaire or application specified in Rule 15Fb6–1(b). Rule 17a–3(a)(12)(i) and Form U–4 provide broker-dealers with information through which they can perform background checks on associated persons necessary to assure that those associated persons are not subject to statutory disqualification. Moreover, the NFA collects similar data on associated persons of its members through the Form 8–R. Consequently, we preliminarily believe it would be appropriate for SBS Entities to collect this information on associated persons to allow them to conduct background checks so that they can comply with the prohibition in Section 15F(b)(6) of the Exchange Act from allowing statutorily disqualified individuals to effect or be involved in effecting SBS transactions on their behalf.

In addition, paragraph (b) of proposed Rule 15Fb6–1 would require that the SBS Entity's chief compliance officer (''CCO'') (appointed in accordance with Exchange Act Section 15F(k)), or his or her designee, review and sign each questionnaire or application.[58] This provision is designed to help ensure that due regard is being paid to this requirement to collect information on employees and to help ensure that none of the SBS Entity's employees who effect or are involved in effecting security-based swaps on the SBS Entity's behalf is subject to statutory disqualification. Moreover, to the extent the SBS Entity's CCO, or his or her designee, must sign the certification, this requirement helps ensure that the CCO is aware of this statutory prohibition and is familiar with the SBS Entity's procedures to comply with it.

Finally, paragraph (c) of proposed paragraph 15Fb6–1 would require that each SBS Entity maintain the questionnaires and applications for employment obtained pursuant to paragraph (b) as part of its books and records for at least three years after the associated person has terminated his or her association with the SBS Entity. It is likely that SBS Entities would retain these records for business purposes; however, this requirement will assure that the questionnaires and applications are available to the Commission during inspections and examinations.

The Commission requests comment on proposed Rule 15Fb6–1.

Q–71. Would the information regarding associated persons in paragraph (b) of the proposed rule be sufficient for a CCO to make the required certification? Why or why not?

Q–72. Should the information requirements in paragraph (b) be modified in any way?

Q–73. Should applicants be required to obtain any additional information not specified in proposed paragraph (b)?

Q–74. Should the Commission require that SBS Entities perform background checks on their employees (*e.g.,* to confirm that their associated persons do not have a criminal history) in addition to obtaining questionnaires or applications? Why or why not?

Q–75. If not, what other process could the Commission use to help ensure that an applicant is not violating Exchange Act Section 15F(b)(6)?

Q–76. Should the Commission require applicants to require credit checks on associated persons? Why or why not?

Q–77. What, if any, practical or legal limitations or barriers exist that would hinder an applicant from obtaining background or credit checks?

Q–78. Should the Commission require applicants to obtain and process fingerprints of their associated persons that will be effecting or involved in effecting security-based swaps on the applicant's behalf? Why or why not?

Q–79. What, if any, practical or legal limitations or barriers exist that would hinder an applicant from obtaining or running fingerprints of associated persons?

[58] Applicants may already have this information on their employees, but may not have a CCO, as required pursuant to new Section 15F(k) of the Act, until the effective date of rules the Commission may promulgate under Section 15F(k). Security-based swap dealers and major security-based swap participants could be conditionally registered even if a CCO has not signed each associated person's questionnaire or application.

Q–80. Should the Commission instead treat the provisions of Section 15F(b)(6) as essentially self-executing and permit SBS Entities to determine how best to screen associated persons to ensure they are not subject to a statutory disqualification (provided that they exercise reasonable care in so doing) and require that an SBS Entity create and maintain reasonable policies and procedures for determining whether an associated person is subject to a statutory disqualification? Why or why not?

Q–81. What would be the benefits and risks of this approach?

Q–82. Would this approach be more or less burdensome for SBS Entities to administer?

Q–83. Would SBS Entities nevertheless implement an approach similar to that required under the proposed rule?

Q–84. How might an SBS Entity comply with Section 15F(b)(6) in ways that differ from what is set forth in the proposed rule?

Q–85. Would this alternative policies and procedures approach provide SBS Entities sufficient legal certainty about whether they have properly complied with Section 15F(b)(6)?

Q–86. Should the Commission require that associated persons of SBS Entities that effect or are involved in effecting security-based swaps on behalf of the SBS Entity register directly with it? What would be the costs or benefits involved with registration of such SBS Entity associated persons? What, if any, practical or legal limitations or barriers exist to this approach?

Q–87. Are there other approaches to implementing Section 15F(b)(6) that the Commission should consider? Please explain.

Q–88. Should the Commission take a different view regarding which associated persons should be considered to be ''involved in effecting'' security-based swaps on behalf of the SBS Entity (*see* footnote 34)? If so, should additional categories of associated persons be included or should certain identified categories of associated persons be excluded? For what reason(s)?

2. Alternative Process

Section 15F(b)(6) expressly authorizes the Commission to establish exceptions to this prohibition by rule, regulation, or order.[59] This authority is similar to authority provided to the Commission with respect to the ''traditional'' securities industry, *i.e.,* the industry regulated under the Exchange Act prior to the Dodd-Frank Act amendments. This existing Exchange Act authority permits SROs, subject to Commission review, to allow, among other things, a person subject to a statutory disqualification to associate with a broker-dealer.[60]

Similarly, Commission Rule 193 (Applications by Barred Individuals for Consent to Associate) provides a process by which persons that are not regulated by a SRO (*e.g.,* employees of an investment adviser, an investment company, or a transfer agent) can seek to reenter the traditional securities industry despite previously being barred by the Commission.[61]

The Commission requests comment on whether it should develop an alternative process to allow associated persons of SBS Entities who are subject to a statutory disqualification to effect or be involved in effecting security-based swaps on their behalf.

Q–89. How many SBS Entities and associated persons thereof are likely to be affected if the Commission does not provide an exemptive process?

Q–90. Is it possible that an associated person that is an entity (*i.e.,* not a natural person) that effects or is involved in effecting security-based swaps on behalf of an SBS Entity would be subject to a statutory disqualification? If so, should the Commission consider excepting any such persons from the prohibition in Section 15F(b)(6)? Under what circumstances and why?

Q–91. Should the Commission except such persons globally (*e.g.,* by a blanket rule) or on an individual basis (*e.g.,* via a Rule 193-type process)? What would be the possible costs or benefits of each?

Q–92. Are there certain statutorily disqualified persons who should not be permitted to remain associated with an SBS Dealer or major security-based swap participant based upon the nature of the disqualification?

Q–93. Should there be any differentiation in relief based upon the nature of the person, *e.g.* a natural person or an entity? If so, what type of differentiation and why?

C. Termination of Registration

1. Expiration: Proposed Rule 15Fb3–1

Exchange Act Section 15F(b)(3) provides that ''each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.'' Although there is no Exchange Act parallel, this provision is similar to Commodity Exchange Act Section 6f(a)(1), which provides that ''each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe. * * *'' CFTC Rule 3.10(b) provides, among other things, that persons registered with the CFTC pursuant to CFTC Rule 3.10 ''will continue to be so registered until the effective date of any revocation or withdrawal of such registration.'' Paragraph (a) of proposed Rule 15Fb3–1 would establish the same continuous registration as is set forth in CFTC Rule 3.10(b), and would provide that registered SBS Entities would ''continue to be so registered until the effective date of any cancellation, revocation or withdrawal of such registration or any other event the Commission determines should trigger expiration.''

Q–94. Does CFTC Rule 3.10(b) provide an appropriate model to implement Exchange Act Section 15F(b)(3)? Why or why not?

Q–95. Should the Commission instead allow initial SBS Entity registrations to expire and require SBS Entities to re-register to become an ongoing registrant (while providing a grace period for this re-registration to occur)? If so, what would be an appropriate amount of time before expiration (*e.g.,* one year, two years, five years, or some other time period)?

Q–96. Alternatively, should the Commission allow SBS Entity registrations to expire periodically and require SBS Entities to re-register periodically (*i.e.,* requiring registrants to ''re-up'' indefinitely on a regular basis)? If so, what would be an appropriate amount of time before expiration (*e.g.,* annually, every two years, every five years, or some other time period)? What would be the advantages, disadvantages, costs and benefits of such an approach?

Q–97. Via what mechanism should any such re-registration be facilitated? For instance, should an SBS Entity be required to re-apply by filing a new application? Alternatively, should an SBS Entity be required to re-certify by filing a new Senior Officer Certification?

[59] 15 U.S.C. 78o–10(b)(6).

[60] When such a person seeks admission to or continuance in membership or association, the Commission and the SRO have the opportunity to give special review to such person and to restrict or prevent entry into, or continuance in, the business where appropriate in the public interest and for the protection of investors. *See* Senate Comm. on Banking, Housing, and Urban Affairs, The Securities Act Amendments of 1989, S. Rep. No. 101–105, at 39 (1989); Provision for Notices by Self-Regulatory Organizations of Stays of Such Actions; Appeals; and Admissions to Membership or Association of Disqualified Persons, 42 FR 36409 (Jul. 14, 1977) (adopting rule 19h–1 under the Exchange Act, 17 CFR 240.19h–1, and providing rules for process of filing notices, content of notices, and Commission determination).

[61] 17 CFR 201.193.

Would some other mechanism be more appropriate? How should any such mechanism take into account the initial application and registration of an SBS Entity? How should any such mechanism take into account the SBS Entity's compliance with applicable rules during the period prior to the re-registration? Would any type of non-compliance during such period justify denial of re-registration, or should the nature of the non-compliance and any remedial actions be taken into account?

Q–98. If re-registration is facilitated by re-certification, would the proposed form of Senior Officer Certification on Form SBSE–C be the appropriate or would some other form or language be more appropriate? For instance, should any re-certification for SBS Entities be drafted to more closely follow the certification requirement proposed for municipal advisors (wherein each municipal advisor certifies annually that it has met its regulatory obligations over the prior period)?

Q–99. If periodic re-registration were required, should re-registration be based on an SBS Entity's original registration date or should it be triggered by a calendar date (*e.g.,* on December 31)?

Q–100. Should the same standard of review that applies to ongoing registration apply in the context of re-registration (*see* proposed rule 15Fb2–1(d)(2))? If not, what alternative standard of review would be more appropriate and why?

Q–101. Would any such expiration and re-registration requirement provide the Commission with a greater ability to enforce compliance with applicable regulations? Why or why not?

As discussed in Part I above, under paragraph (b)(1) of proposed Rule 15Fb3–1, conditional registrations granted by the Commission to an SBS Entity that applies for registration during the transitional period in accordance with Rule 15Fb2–1(b) would expire on the Last Compliance Date, unless the SBS Entity files a Senior Officer Certification with the Commission or its designee on or before the Last Compliance Date; in which case its conditional registration would be extended for an additional thirty days (which should allow the Commission staff sufficient time to review the SBS Entity's application and certification and determine whether to grant or deny ongoing registration). Paragraph (b)(2) of proposed Rule 15Fb3–1 would provide that conditional registrations granted by the Commission to major security-based swap participants that file applications for registration after the Last Compliance Date would expire four months after the major security-based swap participant files its completed application with the Commission unless the major security-based swap participant files a Senior Officer Certification with the Commission or its designee within that four month period; in which case its conditional registration would be extended for an additional thirty days. Pursuant to paragraph (c) of proposed Rule 15Fb3–1, the Commission could extend conditional registration for good cause.

Q–102. Would these timeframes be sufficient to allow conditional registrants to complete—and the Commission to grant or deny—ongoing registration? Why or why not?

Q–103. What circumstances should the Commission consider in determining whether good cause exists to extend an SBS Entity's conditional registration? Why? Should these circumstances include situations in which the Commission may need additional time to review an SBS Entity's application and certification? Why or why not?

Q–104. Should the Commission require that an SBS Entity follow a particular process to request an extension of the SBS Entity's conditional registration? For instance, should an SBS Entity be required to submit a letter requesting an extension and setting forth the reasons why an extension is necessary? If so, what process would be appropriate and why?

2. Withdrawal: Proposed Rule 15Fb3–2

Proposed Rule 15Fb3–2 would provide a process by which an SBS Entity could withdraw from registration with the Commission.[62] The proposed rule would require an SBS Entity to file a notice of withdrawal from registration electronically on Form SBSE–W (described in more detail below) in accordance with the instructions to the Form. It also would require that an SBS Entity amend its Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, in accordance with proposed Rule 15Fb2–3 to update any inaccurate information prior to filing its notice of withdrawal from registration.

Paragraph (b) of proposed Rule 15Fb3–2 would provide that a notice of withdrawal from registration filed by an SBS Entity would generally become effective on the 60th day after the SBS Entity files Form SBSE–W. However, based on its experience with registered broker-dealers, the Commission recognizes that there may be circumstances in which it would be advisable to provide flexibility in scheduling the termination of business operations to registered entities seeking to withdraw from registration. Further, the Commission may determine that it would be appropriate for a registered entity that is under investigation by the Commission to maintain its registered status in order to allow the Commission to conclude a pending investigation without prematurely instituting a proceeding to impose conditions on the registered entity's withdrawal. In such instances, it may better serve the interests of all parties to have the registered entity consent to an extension of the effective date of the registered entity's withdrawal from registration beyond the general 60-day period provided for in the proposed rule. It also may be appropriate to permit the Commission to extend the effective date for a period if it determines, by order, that it is necessary or appropriate in the public interest or for the protection of investors.

Thus, paragraph (b) of proposed Rule 15Fb3–2 would identify specific situations in which notices of withdrawal from registration will not become effective on the 60th day. These would include situations where (1) The Commission determines that a shorter period is appropriate, (2) the SBS Entity consents to a longer period, (3) the Commission, by order, determines that a longer period is necessary or appropriate in the public interest or for the protection of investors, and (4) the Form SBSE–W is filed subsequent to the date of the issuance of a Commission order instituting proceedings to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of the SBS Entity. Finally, paragraph (b) of proposed Rule 15Fb3–2 would provide that if the Commission institutes proceedings prior to the effective date of Form SBSE–W (1) To censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of the SBS Entity, or (2) to impose terms or conditions upon the SBS Entity's withdrawal, the notice of withdrawal shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

The Commission requests comment on all aspects of proposed Rule 15Fb3–2.

Q–105. Would the proposed withdrawal process be workable for SBS Entities? Are the proposed timeframes reasonable for these entities? Why or why not?

[62] This provision is similar to Exchange Act Rule 15b6–1, which has historically worked well to facilitate broker-dealer withdrawals.

Q–106. Under what other circumstances, if any, should the Commission shorten or lengthen the timeframe for withdrawal?

3. Cancellation and Revocation: Proposed Rule 15Fb3–3

Proposed Rule 15Fb3–3 would provide the Commission with the ability to either cancel or revoke a registered SBS Entity's registration. More specifically, paragraph (a) of proposed Rule 15Fb3–3 would allow the Commission to cancel an SBS Entity's registration if the Commission finds that it is no longer in existence or has ceased to do business as an SBS Entity.[63] The cancellation process outlined in paragraph (a) is intended to be ministerial in nature, and not a means to revoke without due process the registration of an SBS Entity that may have violated federal securities laws. This provision is designed to help the Commission allocate its examination and other resources to entities that are actively engaged in business regulated by the Commission.

Paragraph (b) of proposed Rule 15Fb3–3 cross-references the Exchange Act to clarify that the Commission shall censure, place limitations on the activities, functions, or operations of, or revoke (on a permanent or temporary basis) the registration of any SBS Dealer or major security-based swap participant that has registered with the Commission if it makes a finding as specified in Section 15F(l)(2) of the Exchange Act.[64]

Q–107. Is the proposed provision for cancellation of registration appropriate in the context of SBS Entities? Why or why not?

Q–108. Would there be occasion for SBS Entities to have an extended pause in their businesses such that they might appear to have ceased to do business? If so, should the Commission provide that such entities could notify the Commission of their intent to stay in business, notwithstanding their lack of current activities? Should such entities later inform the Commission when they become active?

Q–109. Should there be a time limit on how long such an SBS Entity could retain its registration with the Commission while it is in a ''dormant'' state?

Q–110. Does the proposed provision for revocation in paragraph (b) provide sufficient procedural safeguards for registered SBS Entities? If not, what procedures could be added to provide additional safeguards?

D. Special Requirements for Nonresident SBS Entities

Proposed Rule 15Fb2–4 would require, among other things, that nonresident SBS Entities that are required to register with the Commission[65] (1) Appoint an agent for service of process in the United States (other than the Commission or a Commission member, official or employee) upon whom may be served any process, pleadings, or other papers in any action brought against the nonresident SBS Entity, (2) furnish the Commission with the identity and address of its agent for services of process, (3) certify that the firm can, as a matter of law, provide the Commission with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission, and (4) provide the Commission with an opinion of counsel concurring that the firm can, as a matter of law, provide the Commission with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission.

Paragraph (a) of proposed Rule 15Fb2–4 would define the term ''nonresident security-based swap dealer'' and ''nonresident major security-based swap participant,'' for purposes of Rule 15Fb2–4. Under this definition, an SBS Entity that is incorporated any place that is not in the United States would be considered to be a nonresident. In addition, an SBS Entity that has its principal place of business in any place not in the United States would be considered to be a nonresident.

Q–111. Should the terms ''nonresident security-based swap dealer'' and ''nonresident major security-based swap participant'' be defined differently and, if so, how should the definitions be amended and why?

1. United States Agent for Service of Process

Paragraphs (b)(1) and (2) of proposed Rule 15Fb2–4 would require that each nonresident SBS Entity registered or registering with the Commission obtain a written irrevocable consent and power of attorney appointing an agent for service of process in the United States (other than the Commission or a Commission member, official or employee) upon whom may be served any process, pleadings, or other papers in any action brought against the nonresident SBS Entity and furnish the Commission with the identity and address of its agent for services of process on Schedule F[66] to Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable.[67] These requirements are important to facilitate the Commission and others (for example, the U.S. Department of Justice and any other agency with the power to enforce the Exchange Act) to serve process on a nonresident SBS Entity to enforce the Exchange Act. Paragraph (b)(4) of the proposed rule also would require that registered nonresident SBS Entities must promptly appoint a successor agent if it discharges its identified agent for service of process or if its agent for service of process is unwilling or unable to accept service on its behalf.[68] Further, proposed paragraph (b)(3) would require that registered SBS Entities promptly inform the Commission, through an amendment of the Schedule F of Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, of any change to either its agent for service of process or the name or address of its existing agent for service of process. Finally, paragraph (b)(5) of proposed Rule 15Fb2–4 would require that the registered nonresident

[63] This provision is similar to Exchange Act Section 15(b)(5).

[64] 15 U.S.C. 78o–10(l).

[65] The Commission has received questions as to how the registration requirements for SBS Entities would apply to non-U.S. persons. The Commission is continuing to consider the application of Title VII of the Dodd-Frank Act to non-U.S. persons and intends to address these issues in a separate release, and notes that the proposals described herein with respect to nonresident SBS Entities will be informed by the considerations and comments raised in connection with that release. *See, e.g.,* Letter from Barclays Bank PLC, BNP Paribas S.A., Deutsche Bank AG, Royal Bank of Canada, The Royal Bank of Scotland Group PLC, Société Générale, and UBS AG to David A. Stawick, Secretary, CFTC, Elizabeth M. Murphy, Secretary, SEC, and Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System (Jan. 11, 2011); Letter from Sarah A. Miller, Chief Executive Officer, Institute of International Bankers, to Elizabeth M. Murphy, Secretary, SEC, and David A. Stawick, Secretary, CFTC (Jan. 10, 2011); Letter from Barclays Bank PLC, BNP Paribas S.A., Credit Suisse AG, Deutsche Bank AG, HSBC, Nomura Securities International, Inc., Rabobank Nederland, Royal Bank of Canada, The Royal Bank of Scotland Group PLC, Société Générale, The Toronto-Dominion Bank, and UBS AG to David A. Stawick, Secretary, CFTC, Elizabeth M. Murphy, Secretary, SEC, and Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System (Feb. 17, 2011); and Letter from Laura J. Schisgall, Managing Director and Senior Counsel, Société Générale, to Elizabeth M. Murphy, Secretary, SEC, and David A. Stawick, Secretary, CFTC (Feb. 18, 2011). The Commission is also considering the approach outlined in the letter from Katsunori Mikuniya, Commissioner & Chief Executive, Financial Services Agency, Government of Japan, to Gary Gensler, Chairman, U.S. Commodity Futures Trading Commission (Apr. 1, 2011).

[66] The Schedule F is discussed more fully below as part of the discussion of the Forms.

[67] Paragraphs (b)(1) and (b)(2) of proposed Rule 15Fb2–4, respectively.

[68] Paragraph (b)(3) of proposed Rule 15Fb2–4.

SBS Entity maintain, as part of its books and records, the agreement identified in paragraph (b)(1) for at least three years after the agreement is terminated.

The Commission requests comment on all aspects of the requirement for nonresident SBS Entities to appoint an agent in the United States to receive service of process, pleadings or papers in any action brought against the nonresident SBS Entity.

Q–112. Should only certain types of entities (such as law firms) be allowed to act as U.S. agent for service of process?

Q–113. Should these requirements be expanded to require nonresident SBS Entities to appoint a U.S. agent for purposes of all potential legal proceedings, including those from non-governmental entities, or is this already adequately addressed by contract?

Q–114. Should the Commission require nonresident SBS Entities to provide the Commission with additional information not required of U.S. SBS Entities, such as verification of any non-U.S. registrations?

Q–115. Is the three year time frame for which an SBS Entity would be required to maintain, as part of its books and records, the agreement appointing its agent for service of process appropriate? Would a longer or shorter time period be more appropriate?

2. Access to Books and Records of Nonresident SBS Entity

Proposed Rule 15Fb2–4(c)(1), regarding access to books and records, would require that each nonresident SBS Entity registering with the Commission [69] provide an opinion of counsel and certify on Schedule F of Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, that it can, as a matter of law, provide the Commission with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission.[70] The Commission preliminarily believes that the nonresident SBS Entity certification and supporting opinion of counsel is important to confirm that each nonresident SBS Entity located overseas has taken the necessary steps to be in the position to provide the Commission with prompt access to its books and records and to be subject to inspection and examination by the Commission. To effectively fulfill its regulatory oversight responsibilities with respect to nonresident SBS Entities registered with it, the Commission must have access to those entities' records and the ability to examine them; however, certain foreign jurisdictions may have laws that complicate the ability of financial institutions such as nonresident SBS Entities located in their jurisdictions from sharing and/or transferring certain information including personal financial data of individuals that the financial institutions come to possess from third persons (*e.g.,* personal data relating to the identity of market participants or their customers). The required certification and opinion of counsel regarding the nonresident SBS Entity's ability to provide prompt access to books and records and to be subject to inspection and examination will allow the Commission to better evaluate a nonresident SBS Entity's ability to meet the requirements of registration and ongoing supervision. Failure to make this certification or provide an opinion of counsel may be a basis for the Commission to deny an application for registration.

Paragraph (c)(2) of proposed Rule 15Fb2–4 would require that registered nonresident SBS Entities re-certify, on Schedule F to Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable, within 90 days after any changes in the legal or regulatory framework that would impact the nonresident SBS Entity's ability to provide, or the manner in which it provides, the Commission prompt access to its books and records or impacts the Commission's ability to inspect and examine the nonresident SBS Entity. The re-certification would be required to include a revised opinion of counsel describing how, as a matter of law, the entity will continue to meet its obligations to provide the Commission with prompt access to its books and records and to be subject to Commission inspection and examination under the new regulatory regime. If a registered nonresident SBS Entity becomes unable to comply with this certification because of such changes, or otherwise, then this may be a basis for the Commission to revoke the nonresident SBS Entity's registration.

The Commission requests comment on all aspects of the certification and opinion of counsel requirements contained in paragraph (c) of proposed Rule 15Fb2–4.

Q–116. Will this certification requirement provide the Commission with adequate assurance that nonresident SBS Entities will be able to provide the Commission with access to records?

Q–117. Should the Commission specify that the opinion of counsel contain any additional information? For instance, should the requirement clarify that the opinion of counsel reference the applicable local law or, in the case of an amendment, the manner in which the local law was amended?

Q–118. As described above, certain foreign jurisdictions may have laws that complicate the ability of financial institutions such as nonresident SBS Entities located in their jurisdictions from sharing and/or transferring certain information. What impact may the requirement that a nonresident SBS Entity obtain and submit the described opinion of counsel have on a nonresident SBS Entity's ability to register in the United States in such circumstances or otherwise? Are there circumstances where it would be impossible or impractical for the nonresident SBS Entity to obtain the opinion of counsel? Would a nonresident SBS Entity need to cease doing business in the United States or with U.S. persons solely because of this requirement? Why or why not?

Q–119. If the described opinion of counsel were not required, what alternatives would the Commission have to assure that it is able to access a registered nonresident SBS Entity's books and records and examine the registered nonresident SBS Entity in order to effectively fulfill its oversight responsibilities? What are the relative advantages or disadvantages of any such alternatives?

Q–120. Should the requirement that an SBS Entity obtain an amended opinion of counsel and re-certify its ability to provide the Commission with access to records be limited in any way?

Q–121. The Commission has received three comment letters containing alternative suggestions as to how the Commission should accommodate a foreign bank with a U.S. affiliate that organizes its business so that it could engage in security-based swap transactions with U.S. investors while being subject to a more limited regulatory regime under the Exchange Act in recognition that it is subject to regulation in its home country.[71] The

[69] *See supra* note 65.

[70] In accordance with Proposed Rule 15Fb1–1(b), the SBS Entity will need to maintain a manually signed copy of this certification as part of its books and records until at least three years after the certification has been replaced or is no longer effective.

[71] *See* letter to Mr. David A. Stawick, Secretary, CFTC, Ms. Elizabeth M. Murphy, Secretary, Commission, and Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System from Davis Polk & Wardwell LLP, on behalf of Barclays Bank PLC, BNP Paribas S.A., Deutsche Bank AG, Royal Bank of Canada, The Royal Bank of Scotland Group plc, Société Générale and UBS AG, dated January 11, 2011 (*http://www.sec.gov/comments/s7-39-10/s73910-9.pdf*); letter to Elizabeth M. Murphy, Secretary, Commission, and David A. Stawick, Secretary, CFTC, dated January 10, 2011 (*http://www.sec.gov/comments/s7-39-10/*

Commission requests comment regarding whether the requirement that an applicant provide an opinion of counsel should be amended to recognize or facilitate such arrangements. If so, why and in what way should the requirement be modified? If not, why? Would an amended requirement provide the Commission with adequate assurance that nonresident SBS Entities will be able to provide the Commission with sufficient access to records?

E. Special Situations

1. Succession: Proposed Rule 15Fb2–5

Proposed Rule 15Fb2–5 would provide a process through which an SBS Entity could succeed to the business of another SBS Entity.[72] Consistent with the use of the term in connection with broker-dealer registration, we propose to consider a ''succession'' to mean that a successor firm acquires or assumes substantially all of the assets and liabilities of the predecessor firm.[73]

Proposed Rule 15Fb2–5 would provide that, if an SBS Entity succeeds to and continues the business of another SBS Entity, the registration of the predecessor SBS Entity will remain effective as the registration of the successor if the successor files an application for registration in accordance with Rule 15Fb2–1 within 30 days after such succession, and the predecessor files a notice of withdrawal from registration on Form SBSE–W.

Paragraph (b) of Proposed Rule 15Fb2–5 would allow a successor firm that succeeds to the business of another for minor reasons, where the ownership or control of the SBS Entity does not change (*e.g.,* solely because it is changing its date or state of incorporation, form of organization, or the composition of a partnership), to simply amend the registration of the predecessor SBS Entity on Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, within 30 days after the change.

Q–122. Are these proposed successor rules appropriate for SBS Entities?

Q–123. Should the concept of succession be the same as used in the context of broker-dealer registration? Commenters should explain why any differences would be appropriate.

Q–124. Are the timeframes provided, which seem to work well in the broker-dealer context, appropriate with respect to SBS Entity succession?

2. Insolvency: Proposed Rule 15Fb2–6

Proposed Rule 15Fb2–6 would provide a process through which an executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy or other fiduciary appointed or qualified by order, judgment or decree of a court of competent jurisdiction could continue the business of an SBS Entity.[74] This is important to allow a fiduciary time to close-out positions and/or wind down an SBS Entity's business. Under the proposed rule, the fiduciary would be required to file with the Commission, within 30 days after entering upon the performance of his or her duties, an amended Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, indicating the fiduciary's position with respect to management of the SBS Entity, along with a copy of the order, judgment, decree, or other document appointing the fiduciary.

Q–125. Is proposed Rule 15Fb2–6 appropriate for SBS Entities? If another process would be more appropriate, please describe it.

Q–126. Should fiduciaries be able to continue the business of an SBS Entity to facilitate an orderly liquidation? If not, why?

Q–127. Is the proposed 30-day timeframe, which is consistent with the Rule 15b1–4 requirement for broker-dealer fiduciaries, sufficient for an SBS Entity fiduciary to make the required filing with the Commission?

Q–128. Do the close-out provisions in the agreements between the parties provide sufficient ability for counterparties to close-out open positions in the event of an SBS Entity default so that a fiduciary would not be needed? Please explain.

F. Technical Rules

1. Electronic Signatures

Proposed Rule 15Fb1–1 would specify the format required for signatures to, or within, electronic submissions (including signatories within the forms and certifications required by §§ 240.15Fb2–1, 240.15Fb2–4 and 240.15Fb6–1, discussed below). In addition, paragraph (b) of proposed Rule 15Fb1–1 would require that each signatory to such an electronic filing manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing either before or at the time the electronic filing is made. Paragraph (b) would also require that the SBS Entity create the manually signed document when the electronic form is submitted, and furnish a copy of such document to the Commission upon request. Paragraph (c) of proposed Rule 15Fb1–1 would prohibit a person required to provide a signature on an electronic submission from having another person sign the form or certification on his or her behalf pursuant to a power of attorney or other form of confirming authority. Finally, paragraph (d) would require that the SBS Entity retain the manually signed document associated with Schedules F and G of Forms SBSE, SBSE–A, or SBSE–BD, as appropriate, until at least three years after the form or certification has been replaced or is no longer effective, and the manually signed document associated with Form SBSE–C until at least three years after the Form was submitted to the Commission.

This proposed rule is based on Section 302 of Regulation S–T,[75] and is designed to require standard formatting of electronic signatures and provide the Commission with the ability to obtain additional documents to verify those signatures. In addition, paragraph (c) of proposed Rule 15Fb1–1 is based on paragraph (d) of Exchange Act Rule 15d–14. The Commission believes that this paragraph is necessary to assure that persons signing certifications can be held responsible for their statements.

The Commission requests comment on all aspects of Rule 15b1–1.

Q–129. Is it adequate to require an SBS Entity to maintain a signed copy of each certification as part of its books and records so that it is available for examiners to review?

Q–130. Should the Commission require SBS Entities to file the original certifications with the Commission?

Q–131. Are the timeframes for retention of manually signed documents appropriate? Why or why not? If not, what timeframe or timeframes may be more appropriate and why?

s73910-8.pdf); and letter to Ananda Radhakrishnan, Director, Division of Clearing and Intermediary Oversight, CFTC, John M. Ramsay, Deputy Director, Division of Trading and Markets, Commission, and Mark E. Van Der Weide, Senior Associate Director, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System, dated November 23, 2010 (*http://www.sec.gov/comments/s7-34-10/s73410-3.pdf*).

[72] This proposed rule is based on Exchange Act Rule 15b1–3, which is applicable to registered brokers and dealers and has worked well to facilitate succession of registrants.

[73] *Registration of Successors to Broker-Dealers and Investment Advisers,* Exchange Act Release No. 31661 (Dec. 28, 1992) (58 FR 7 (Jan. 4, 1993)).

[74] The proposed rule is based on Exchange Act Rule 15b1–4, which applies to broker-dealer registrations. We believe this rule has worked well to allow fiduciaries to wind-up broker-dealer businesses without the need to separately register as a broker-dealer.

[75] 17 CFR 232.302.

2. Temporary Rule To Facilitate Paper Filing of Forms

If a technological means to facilitate receipt and retention of applications required to be filed in accordance with Rule 15Fb2–1 is not functional by the time final rules are adopted, proposed temporary Rule 15Fb2–2T would require an SBS Entity to file its application on Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable, and all additional documents in paper form by sending it to the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, notwithstanding paragraph (c)(1) of Rule 15Fb2–1. In addition, if proposed temporary Rule 15Fb2–2T is adopted, paragraph (b) would require that each applicant must resubmit its Form SBSE, Form SBSE–A, and Form SBSE–BD, as applicable and all additional documents to the Commission electronically within three months of the date such technological means to facilitate receipt and retention of applications becomes functional. Depending on the timing, SBS Entities may also need to file their Forms SBSE–C in paper format and later resubmit those Forms electronically.

Proposed temporary Rule 15Fb2–2T would provide a process for the Commission to receive applications in paper format if a technological means to facilitate receipt and retention of applications cannot be completed before final SBS Entity registration rules are adopted. Further, Proposed temporary Rule 15Fb2–2T would facilitate the transition of data to an electronic format once such a system becomes functional. The benefits of an electronic system outweigh additional costs relating to the need for SBS Entities to file their applications in both paper and electronic form. In addition, requiring that each SBS Entity file its application electronically would assure that each firm can confirm that the data entered into the electronic system is accurate and complete.

The Commission requests comment on proposed temporary rule 15Fb2–2T.

Q–132. Is this paper process practicable?

Q–133. Should the Commission instead allow applicants to submit their applications in PDF form via e-mail?

Q–134. Instead of the process contemplated by paragraph (b) of proposed Rule 15Fb2–2T, should the Commission reduce the paper filings to electronic form instead of the applicants?

G. Forms

1. Form SBSE

Proposed Form SBSE is generally based on Form BD—the consolidated Form used by broker-dealers to register with the Commission, states and SROs. Form BD has been used to gather and organize certain information concerning applicants' business operations to facilitate Commission, state and SRO initial registration decisions, as well as ongoing examination and monitoring of registrations. Because SBS Entities will be subject to many requirements similar to those that affect broker-dealers (*e.g.,* minimum capital, leverage, and business conduct rules and statutory disqualification prohibitions), the Commission believes using Form BD as a template for the registration of SBS Entities is logical and efficient. Key differences from Form BD are outlined below:

- The phrase ''broker or dealer'' was changed to ''security-based swap dealer or major security-based swap participant'' because Form SBSE will be used by firms to register as SBS Entities and not as broker-dealers;
- References to SROs and jurisdictions were removed except where they arose in the context of a contractual relationship or disciplinary proceeding because SBS Entities will generally not be required to register with SROs or states;
- References to branch offices were removed because the SBS business is generally conducted on a more centralized basis and is not effected through branch offices;
- The General Instructions eliminate the instructions for filing the form in paper format because we intend to require that the forms be filed electronically;[76]
- The Explanation of Terms section is substantially the same;[77] however the term ''jurisdiction'' was replaced with the term ''state'' to eliminate potential confusion regarding questions in Item 11 that relate to actions brought in either domestic or foreign jurisdictions and the term ''foreign financial regulatory authority'' was removed because it is now defined in Exchange Act Section 3(a)(52);
- Item 1–J of Form SBSE would elicit the name and contact information for the Chief Compliance Officer designated by the applicant in accordance with Exchange Act Section 15F(k) (broker-dealers are not now required to provide this information on Form BD);
- Item 2b of Form SBSE would elicit information, if a firm is registering as a major security-based swap participant, regarding whether the firm is registering because it maintains a substantial position, has substantial counterparty exposure, or is highly leveraged relative to its capital position, which will assist the staff in evaluating its application;
- Item 3 of Form SBSE would elicit whether the SBS Entity intends to use mathematical models to calculate any applicable capital or margin or to price customer or proprietary positions (whether or not for regulatory purposes), which will assist the staff in considering what types of examinations may be required;
- Item 4 of Form SBSE would elicit whether the applicant is subject to regulation by a prudential regulator[78] because the extent of the Commission's regulatory responsibilities for entities subject to regulation by a prudential regulator differ;
- In addition to eliciting information regarding recordkeeping arrangements, Item 8 would also query whether the applicant has any arrangement under which any other person, firm or organization executes, trades, custodies, clears or settles on behalf of the applicant (including any SRO or swap execution facility in which the applicant is a member). This information is designed to provide the Commission with an understanding of the SBS Entity's business relationships.
- References to the Securities Investor Protection Corporation in the ''Execution'' section have been eliminated because SBS Entities are not required to become members of SIPC[79] and references to surety bonding and service of process in each state has also been eliminated because Form SBSE does not facilitate registration with states (as the Form BD does);
- Form SBSE would require disclosure of whether the applicant is registering as an SBS dealer or major security-based swap participant, the applicant's legal status, whether the applicant is succeeding to the business

[76] If a technological means to facilitate the receipt and retention of applications is not finalized by the time final rules are adopted and the Commission must adopt proposed Rule 15Fb2–2T, instructions regarding paper filing would be re-inserted.

[77] The Explanation of Terms section includes definitions of the terms applicant, control, state, person, self-regulatory organization, successor, charged, control affiliate, enjoined, felony, found, investment or investment-related, involved, minor rule violation, misdemeanor, order, and proceeding.

[78] The term ''prudential regulator'' is now defined at 15 U.S.C. 78c(a)(74).

[79] Only SBS Entities that are also registered as a broker-dealer would be SIPC members. SBS Entities that are also registered as a broker-dealer will be required to file Form SBSE–BD and not Form SBSE.

of another SBS Entity, and the applicant's control relationships;[80] and

• Form SBSE would elicit a description of the applicant's business in a text box rather than through the use of a list of possible types of business.

Proposed Form SBSE, like Form BD, would elicit information regarding criminal disclosures, regulatory action disclosures, civil judicial disclosures, and financial disclosures. As with Form BD, ''yes'' answers to these questions would require that the applicant file additional information on disclosure reporting pages (or ''DRPs'') as a supplement to the Form. As with Form BD, Form SBSE would also elicit information on whether the applicant is registered with the Commission as an investment adviser, registered with the CFTC as an FCM, or whether it is engaged in any other investment-related, non-securities business.

Schedules A and B, which elicit information regarding direct and indirect owners and executive officers, would be largely unchanged (with the exception of the header, the elimination of a request for social security numbers in the tables): however, the table in Schedule A has been expanded to elicit information regarding prior investment-related experience of individual owners who are not otherwise registered through CRD or IARD to provide the Commission an understanding of each owner's background and qualifications in light of the fact that they will not be individually registered as is the case with owners of broker-dealers. Schedule C would be eliminated because electronic filing of the forms would make it unnecessary. Schedule D would be amended slightly to address differences between the security-based swap business and the broker-dealer business (*e.g.,* there are no ''introducing and clearing arrangements''). In addition, Section IV in Item D has been expanded to elicit additional information regarding the nature of the execution, trading, custody, clearing or settlement arrangement, as well as information regarding any prior investment-related experience of individual control persons who are not otherwise registered through CRD or IARD. This information is designed to provide the Commission with an understanding of the SBS Entity's business relationships and each control person's respective background and qualifications in light of the fact that they will not be individually registered as is the case with owners of broker-dealers. The staff understands that SBS Entities may conduct security-based swap business from multiple locations; however, those that would register with the Commission using Form SBSE likely would not refer to those locations as ''branches.'' Consequently, Schedule E of Form SBSE[81] would solicit information regarding locations rather than branches.

The proposed form would also include two additional schedules to be used by SBS Entities—Schedules F and G. Schedule F must be submitted by nonresident SBS Entities pursuant to proposed Rule 15Fb2–4 to provide the Commission with information regarding its appointed U.S. agent for service of process and to certify that it is able to provide the Commission with prompt access to its books and records.[82]

Schedule G would be required to be submitted by all SBS Entities pursuant to proposed Rule 15Fb6–1(a). Schedule G would provide each SBS Entity with a method to certify that none of its associated persons that are effecting or involved in effecting security-based swaps on its behalf is subject to statutory disqualification. This Schedule is designed to provide the Commission with assurance that the SBS Entity is compliant with Section 15F(b)(6) of the Exchange Act. The Form would require that the firm's Chief Compliance Officer sign Schedule G.

The Commission intends to use the information disclosed by applicants in Form SBSE (including the Schedules and DRPs) to determine whether the applicant meets the standards for registration, and to fulfill its oversight responsibilities.

The Commission requests comment on all aspects of Form SBSE.

Q–135. Should the registration form for SBS Entities be based on Form BD, CFTC Form 7–R, or some other form? Please describe the reasons for choosing a particular form over another.

Q–136. How many firms may apply for registration as SBS Entities?

Q–137. Should any of the instructions or questions on Form SBSE be amended to recognize particular characteristics of the business of SBS Entities?

Q–138. Are any of the proposed questions on Form SBSE inapplicable to the SBS business?

Q–139. Should any questions be added to Form SBSE to elicit information that is unique to the SBS business or to the SBS Entities that engage in that business?

Q–140. Is proposed new Schedule F the best method to collect information regarding a nonresident SBS Entity's agent for service of process? If not, what other method could the Commission utilize?

Q–141. Is the requirement that an SBS Entity certify on new Schedule F that it can, as a matter of law, provide the Commission with access to its books and records and allow the Commission to conduct onsite inspections the best method to assure the Commission is able to have such access? If not, what other method could the Commission utilize?

Q–142. Is it appropriate to require a nonresident SBS Entities to also submit an opinion of counsel opining on this issue?

Q–143. Is proposed new Schedule G the best method to assure that an SBS Entity is complying with Section 15F(b)(6) of the Exchange Act? If not, what other method could the Commission utilize?

Q–144. Would the Form SBSE disclosure requirements present any unique issues for financial institutions not previously subject to similar disclosure requirements? If so, please describe.

Q–145. Should Form SBSE include additional Schedules in which the applicant could provide more detailed information regarding its business (*e.g.,* a business plan, descriptions of the types of products the applicant will offer, the types of counterparties it will have, information regarding the applicant's operational, supervisory and compliance infrastructure, its major vendors, its clearing arrangements), similar to what the Commission typically requires of other types of applicants (*e.g.,* clearing agencies and national securities exchanges)? If so, what specific types of information should be required?

[80] These questions are similar to questions that appear on pages 2 and 3 of the Form BD.

[81] Schedule E of Form BD has been replaced by Form BR, which is designed to enable broker-dealers to register their branch office locations electronically with SROs and states. *See, Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Proposed Uniform Branch Office Registration Form (''Form BR''),* Exchange Act Release No. 52543 (Sep. 30, 2005), 70 FR 58771 (Oct. 7, 2005); and *Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to the Proposed Uniform Branch Office Registration Form (''Form BR'') and Amendments to the Uniform Application for Securities Industry Registration or Transfer (''Form U4'') and the Uniform Termination Notice for Securities Industry Registration (''Form U5''),* Exchange Act Release No. 52544 (Sep. 30, 2005), 70 FR 58764 (Oct. 7, 2005).

[82] Nonresident broker-dealers must presently file one of four similar forms (Form 7–M, Form 8–M, Form 9–M or Form 10–M, depending on the broker-dealer's form or organization) to appoint an agent for service of process.

Q–146. If there are changes in this type of information over time, how frequently should the registrant be required to update the relevant schedules?

2. Form SBSE–A

CEA Section 4s(c) and Exchange Act Section 15F(c) require that persons that engage in both swap business and security-based swap business must separately register with each agency. However, the staff is proposing that applicants that are not registered with the Commission as broker-dealers, but that are registered or registering with the CFTC as either a swap dealer or major swap participant, file their application for registration on an alternative to Form SBSE, or Form SBSE–A. Form SBSE–A is a shorter form and is intended to make it easier for dual applicants to file with both agencies. As part of its application, a firm filing with the Commission on Form SBSE–A would need to provide the Commission with a copy of the form it files with the CFTC to register as a swap dealer or major swap participant. Form SBSE–A is designed to provide the Commission with data, not included on the form the applicant must file with the CFTC, that the Commission believes it will need to adequately review an application for registration.[83] While some information elicited via Form SBSE–A also may be elicited by the CFTC's form, it will be helpful for the Commission to receive this information directly to allow the Commission to match the Form SBSE–A with the CFTC Form and to coordinate the information elicited through Form SBSE–A with other information the Commission may have on the applicant. The Commission believes that requiring that these applicants use Form SBSE–A would reduce the costs and burdens associated with filing distinctly different forms to register with both the Commission and CFTC.

Proposed Form SBSE–A is loosely based on Form SBSE, which, as described above is based on Form BD (the Form used by broker-dealers to register with the Commission). As discussed more fully above, the Commission has used Form BD to gather information necessary for it and the SROs to determine whether to grant broker-dealer registration to an applicant. Key differences from Form SBSE are outlined below:

- The General Instructions have been modified to identify the Form and Schedules to be used to register as an SBS Entity and to eliminate the instructions for filing in paper format because we intend to require that the forms be filed electronically;[84] and
- To reduce potential confusion regarding the use of two forms,[85] the initial instruction in the Explanation of Terms section states that terms used in Form SBSE–A that are defined in CFTC Form 7–R shall have the same meaning as set forth in that form, and terms not otherwise defined in CFTC Form 7–R have the same meaning as in Form SBSE.

Item 1.C. on Form SBSE–A would elicit the firm's NFA number. Items 2 through 13 of proposed Form SBSE–A would require that the applicant identify the capacity in which it is seeking to register with the Commission, the capacity in which it is registered with or seeking to register with the CFTC, certain control and business relationships, succession and other basic information regarding the firm's business. These questions are similar to information elicited via Form SBSE, which elicit information not otherwise elicited through Form 7–R but which the Commission believes is useful to facilitate its oversight of regulated entities.

Item 2b of Form SBSE–A would elicit information, if a firm is requesting registration as a major security-based swap participant, regarding whether the firm is registering because it maintains a substantial position, has substantial counterparty exposure, or is highly leveraged relative to its capital position, which will assist the staff in evaluating its application. Item 3 of Form SBSE–A would elicit whether the SBS Entity intended to use mathematical models to calculate capital or margin or to price customer or proprietary positions because this would highlight for staff the need for a more extensive review. Item 5 of Form SBSE would elicit whether the applicant is subject to regulation by a prudential regulator because the extent of the Commission's regulatory responsibilities for entities subject to regulation by a prudential regulator differ.[86]

Items fourteen and fifteen on Form SBSE–A would elicit information regarding ''principals.'' The definition of ''principal'' in CFTC Form 7–R is similar to the definition of control affiliate in Form BD. Form BD requires that an applicant file substantial information on its control affiliates. We understand that the CFTC presently requires that individual principals of entities registered with the CFTC file separate registrations with the CFTC. Consequently, the CFTC would have information on those individuals regarding any situations that would cause those individuals to be statutorily disqualified without requiring that the applicant include that information in its application. In recognition of this method and to decrease duplication, item thirteen would require that an applicant identify how many individual principals it has. Further, the applicant would need to list those principals on proposed new Schedule A to Form SBSE–A and provide information regarding those individual principals similar to the information provided on Schedule A of Form SBSE. Item fifteen asks whether any principals of the applicant that are entities effect or are involved in effecting security-based swaps on behalf of the applicant. If the question is answered in the affirmative, the applicant would need to provide additional information on Schedule B with respect to those entities. This information is designed help the Commission better understand the relationship between the applicant and its principals in order to assure compliance with Section 15F(b)(6) of the Exchange Act and to police for manipulation and fraud.

As discussed above, Schedule A of Form SBSE–A would require that an applicant list all principals that are individuals and provide some basic information regarding each (*e.g.,* the person's title, NFA number, and prior investment-related experience). Much of this information is provided to the Commission via Form BD for broker-dealers, and the CFTC would already have this information on control persons but, without new Schedule A to Form SBSE–A, the Commission would not otherwise have this information. This information is designed to help the Commission better understand the relationship between the applicant and its principals and a basic background of those principals in order to assure compliance with Section 15F(b)(6) of the Exchange Act and to police for manipulation and fraud.

Schedule B would elicit information regarding other business in which the applicant is engaged, business

[83] The CFTC has proposed that swap dealers and major swap participants file their applications on Form 7–R and accompanying Form 8–R. Also, *see supra* note 10. Consequently, the Commission's assessment of what information applicants should be required to provide on Form SBSE–A was based on Form 7–R. If the CFTC's application form for swap dealers or major swap participants deviates substantially from Form 7–R, the Commission will need to re-assess the information it would need to collect through Form SBSE–A. Form 8–R is the Form used for registration of individuals.

[84] *See* paragraph (c) of proposed Rule 15Fb2–1.

[85] One to register with the CFTC as a swap dealer or major swap participant and one to register with the Commission as an SBS Entity.

[86] *See, e.g.,* 15 U.S.C. 78o–10(e).

arrangements, successions, and principals that are not identified in Schedule A, and is based loosely on Schedule D to Form BD. Schedule C would elicit information regarding principals that are identified in Schedule B that would cause those persons to be statutorily disqualified, and is based on Item 11 in Form BD.[87] The applicant would need to file a DRP for every ''yes'' answer in Schedule C. The Schedules F and G to Form SBSE–A are the same Schedules as described above in the section regarding Form SBSE.

The Commission intends to use the information disclosed in Form SBSE–A to determine whether applicants meet the standards for registration and to fulfill its oversight responsibilities.

Q–147. Is Form SBSE–A properly tailored to decrease costs for dual registration while still providing the Commission with information necessary on which to base its decision to grant or deny registration?

Q–148. What are the comparative costs or benefits with respect to filing Form SBSE versus filing Form SBSE–A for entities filing as both swap entities with the CFTC and SBS Entities with the Commission?

Q–149. How many firms expect to apply for registration as SBS Entities and what is the likelihood that those entities will also register with the CFTC as swap dealers or major swap participants?

Q–150. Will the benefit of being able to file the same form with the Commission as filed with the CFTC be outweighed by the requirement to file those forms, as well as additional schedules and documents, with more than one agency or entity or through more than one electronic system?

Q–151. Should FCMs registered with the CFTC that are not registered or registering with the CFTC as either a swap dealer or a major swap participant be allowed to register with the Commission using Form SBSE–A?

Q–152. Are any such FCMs likely to register with the Commission as an SBS Entity?

Q–153. Would it be more cost effective for the Commission to obtain the data applicants file with the CFTC electronically from the CFTC or its designee rather than having the applicant file a copy of that form with the Commission?

Q–154. Should any of the instructions or questions on Form SBSE–A be amended to recognize particular characteristics of the business of SBS Entities?

Q–155. Are any of the proposed questions inapplicable to the SBS business?

Q–156. Should any questions be added to elicit information that is unique to the SBS business or to the SBS Entities that engage in that business?

3. Form SBSE–BD

Similar to the Form SBSE–A, the staff is proposing that applicants that are also registered or registering with the Commission as broker-dealers file their application for registration on an alternative to Form SBSE, or Form SBSE–BD.[88] In addition, any entity that is registered or registering with the Commission as a broker-dealer and that is also registered or registering with the CFTC as a swap dealer or major swap participant would be required to use the Form SBSE–BD. Form SBSE–BD is based on Form BD, but is designed to provide the Commission with data not included on the Form BD (to which the Commission has access). The Commission believes that requiring that these applicants use Form SBSE–BD would reduce the costs and burdens on applicants that are already registered or registering with the Commission as broker-dealers.

The proposed Form SBSE–BD would consist of a single page that would elicit information not included on Form BD, such as the capacity in which the applicant is registering, whether the entity also is registering with the CFTC and, if so, in what capacity the firm is registering with the CFTC, if a firm is requesting registration as a major security-based swap participant—whether the firm is registering because it maintains a substantial position, has substantial counterparty exposure, or is highly leveraged relative to its capital position, whether the SBS Entity intends to use mathematical models to calculate capital or margin or to price customer or proprietary positions, whether the firm is subject to oversight by a prudential regulator and information regarding the applicant's chief compliance officer. Form SBSE–BD would also require that applicants submit Schedules F and G, described more fully above.

The Commission intends to use the information disclosed in Form SBSE–BD to determine whether applicants meet the standards for registration, and to fulfill its oversight responsibilities.

Q–157. What will the comparative costs or benefits be with respect to filing Form SBSE versus filing Form SBSE–BD for registered broker-dealers filing as SBS Entities with the Commission?

Q–158. How many firms expect to apply for registration as SBS Entities and whether those entities are already registered with the Commission as broker-dealers?

Q–159. Should any of the instructions or questions be amended to recognize particular characteristics of the business of SBS Entities?

Q–160. Are any of the proposed questions inapplicable to the SBS business?

Q–161. Should any questions be added to elicit information that is unique to the SBS business or to the SBS Entities that engage in that business?

4. Form SBSE–C

Proposed Form SBSE–C is designed to provide SBS Entities with a standard format and process through which to file the Senior Officer Certification required pursuant to proposed Rule 15Fb2–1(b). Form SBSE–C would need to be filed by all SBS Entities. As described above, SBS Entities that submitted their applications during the transitional period would need to file this certification either before the Last Compliance Date or their conditional registration would expire. Major securities-based swap participants that submitted their applications after the Last Compliance Date would need to file this certification within four months after filing a completed application or their conditional registration would expire. SBS Dealers that file applications after the Last Compliance Date would need to file both an application and a certification simultaneously to be considered for ongoing registration.

Form SBSE–C includes instructions both requiring electronic submission and explaining how the form should be filed electronically.

Form SBSE–C would elicit the applicant's name, date, and SEC number, along with the signature, name and title of the senior officer signing the certification. The Commission intends to use the certification provided by Form SBSE–C in determining whether applicants meet the standards for ongoing registration.

The Commission requests comment on the Form SBSE–C.

Q–162. Should Form SBSE–C require that SBS Entities provide any additional

[87] Any differences between Schedule B to Form SBSE–A and Schedule D to Form SBSE and between Schedule C of Form SBSE–A and Item 11 in Form SBSE recognize the fact that Form SBSE–A has been tailored to collect information not otherwise elicited via Form 7–R which the Commission has found to be helpful to facilitate its oversight of the entities it regulates.

[88] Over-the-counter derivatives dealers, a limited form of broker-dealer established by the Commission in 1998, could also file on Form SBSE–BD.

information? If so, how should the form be amended?

Q–163. Should the instructions to Form SBSE–C be amended?

5. Form SBSE–W

Proposed Form SBSE–W is loosely based on Form BDW (the Form used by broker-dealers to withdraw from registration with the Commission). The Commission has found Form BDW to be an effective vehicle for gathering information necessary for it and the SROs to determine whether it is appropriate to allow a registered broker-dealer to withdraw from registration. Because SBS Entities will be subject to many requirements similar to those that affect broker-dealers (*e.g.,* minimum capital, leverage, and business conduct rules and statutory disqualification prohibitions), the Commission believes using Form BDW as a template for the request for withdrawal from registration of SBS Entities is logical and efficient. Key differences from Form BDW are outlined below:

- The distinction regarding full and partial withdrawal was eliminated from the Form SBSE–W as it is not relevant to the SBS business; and
- Item 4 was added to elicit information regarding the entity's reason for withdrawal from registration because we believe this information would be useful when considering a registered SBS Entity's request to withdraw from registration.

The purpose of proposed Form SBSE–W is to allow the Commission to determine whether it is in the public interest to permit a registered SBS Entity to withdraw from registration.

The Commission requests comment on the Form SBSE–W.

Q–164. Given that the Commission has proposed to use different forms for registration of certain types of applicants, should different types of forms also be provided for withdrawals from registration? If so, how should the form or forms be amended?

Q–165. Should the instructions to Form SBSE–W be amended? If so, how?

6. Tagged Data Formats

As part of the Commission's longstanding efforts to (1) Improve the accuracy of financial and other filed information, (2) increase the transparency and usefulness of information, and (3) facilitate analysis of information provided to the Commission via reports, we have begun requiring that entities data-tag information contained in electronic filings.[89] Data becomes machine readable when it is labeled, or ''tagged,'' using a computer markup language that can be processed by software programs for analysis. Such computer markup languages (such as eXtensible Markup Language (XML) and eXtensible Business Reporting Language (XBRL)) use standard sets of definitions, or ''taxonomies,'' that translate text-based information in Commission filings into structured data that can be retrieved, searched, and analyzed through automated means.

In addition to using the data provided via proposed Forms SBSE, SBSE–A, and SBSE–BD to determine whether to grant or deny registration, the Commission will make this data public. The fact that counterparties of SBS Entities would have access to additional, standardized information could improve competition amongst SBS Entities and would enable counterparties and the marketplace to expend less time and money to independently obtain and compile information on SBS Entities to use in making such choices. Thus, the Commission intends to tag the information in a machine readable format using a data standard that is freely available, and that is consistent and compatible with the tagged data formats already in use for SEC filings, to enable users of that data to retrieve, search, and analyze the data through automated means.

Q–166. What tagged data language (*e.g.,* XML, XBRL) would be most appropriate to be used for the required data to be provided via proposed Forms SBSE, SBSE–A, SBSE–BD, SBSE–C, and SBSE–W?

H. Alternative Approaches Considered

The Commission considered alternative approaches to registration of SBS Entities. One possibility would be to adopt joint registration forms with the CFTC, so that SBS Entities could register with both agencies using the same forms. While there could be benefits to this approach, we believe that the Commission's streamlined approach will achieve many of the same benefits.

Another possibility would be for the CFTC to require swap dealers and major swap participants to register using the Commission's forms, or for the Commission to require SBS Entities to register using the CFTC's forms. While this approach might streamline the registration process for regulated entities, particularly those that intend to engage in both swaps and SBS business, it would be more difficult for the agencies to implement given the Commissions' finite resources. Further, differences between the Commodity Exchange Act and the Exchange Act and the means to facilitate registration may justify differences in the forms.

III. Request for Comment

In addition to the questions described above, we are requesting comments on all aspects of proposed rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W, including with respect to the following questions:

Q–167. Should the Commissions continue to consider whether to develop a joint registration form?

In addition, Title VII of the Dodd-Frank Act requires that the SEC consult and coordinate to the extent possible with the CFTC for the purposes of assuring regulatory consistency and comparability, to the extent possible, and states that in adopting rules, the CFTC and SEC shall treat functionally or economically similar products or entities in a similar manner.

The CFTC is adopting rules related to registration of swap dealers and major swap participants as required under Section 731 of the Dodd-Frank Act. Understanding that the Commission and the CFTC regulate different products and markets, and as such, appropriately may be proposing alternative regulatory requirements, we request comments on the impact of any differences between the Commission's approach to the registration process for SBS Entities and CFTC's approach to the registration of swap dealers and major swap participants. Specifically:

Q–168. Do the regulatory approaches under the Commission's proposed rulemaking pursuant to Section 764 of the Dodd-Frank Act and the CFTC's proposed rulemaking pursuant to Section 731 of the Dodd-Frank Act result in duplicative or inconsistent efforts on the part of market participants subject to both regulatory regimes or result in gaps between those regimes?

Q–169. If so, in what ways do commenters believe that such duplication, inconsistencies, or gaps should be minimized?

Q–170. Do commenters believe the approaches proposed by the Commission and the CFTC to register

[89] *See* Regulation S–T, 17 CFR 232. *See also Electronic Filing and Revision of Form D,* Securities Act Release No. 8891 (Feb. 6, 2008) (73 FR 10592 (Feb. 27, 2008)); *Interactive Data To Improve Financial Reporting,* Securities Act Release No. 9002 (Jan. 30, 2009) (74 FR 6776 (Feb 10, 2009)); and *Interactive Data for Mutual Fund Risk/Return Summary,* Securities Act Release No. 9006 (Feb. 11, 2009) (74 FR 7748 (Feb 19, 2009)); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 61050 (Nov. 23, 2009) (74 FR 63832 (Dec. 4, 2009)); and *Money Market Fund Reform,* Investment Company Release No. 29132 (Feb. 23, 2010 (75 FR 10060 (Mar. 4, 2010)).

SBS Entities and swap dealers and major swap participants are comparable? If not, why?

Q–171. Do commenters believe there are approaches that would make the registration of SBS Entities and swap dealers and major swap participants more comparable? If so, what?

Q–172. Do commenters believe that it would be appropriate for the Commission to adopt an approach proposed by the CFTC that differs from our proposal? Is so, which one and why?

We request commenters to provide data, to the extent possible, supporting any such suggested approaches.

The Commission is cognizant that the proposed rules discussed herein, as well as other proposals that the Commission may consider in the coming months to implement the Dodd-Frank Act, if adopted, could significantly affect—and be significantly affected by—the nature and scope of the security-based swaps market in a number of ways. For example, the Commission recognizes that if the measures proposed in this release are adopted and are too onerous for new entrants, they could hinder the further development of a market for security-based swaps by unduly discouraging competition and the formation of new SBS Dealers and major security-based swap participants. On the other hand, if the Commission adopts rules that are too permissive, the Commission may grant registration to firms that may have insufficient capacity, policies, procedures, or risk management systems. The Commission is also mindful that the further development of the security-based swaps market may alter the calculus for future regulation of SBS Dealers and major security-based swap participants. As commenters review this release, they are urged to consider generally the role that regulation may play in fostering or limiting the development of the market for security-based swaps (or, vice versa, the role that market developments may play in changing the nature and implications of regulation) and specifically to focus on this issue with respect to the proposals to register SBS Dealers and major security-based swap participants.

IV. Paperwork Reduction Act

Certain provisions of proposed Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''). The Commission has submitted the information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. 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 control number. The title of this collection is ''Registration Rules for Security-Based Swap Entities.'' We are applying for a new OMB Control Number for this collection in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13.

A. Summary of Collection of Information

As required by Exchange Act Section 15F, the Commission is proposing Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W to facilitate registration of, certification by, and withdrawal of SBS Entities.

Pursuant to paragraph (a) of proposed Rule 15Fb2–1, each SBS Entity would be required to file an application to register with the Commission. The Commission has sought to reduce burdens and costs associated with the application process by providing alternate registration forms for SBS Entities that are registered or registering either with the CFTC as swap dealers or major swap participants or with the Commission as broker-dealers. The alternative forms (Form SBSE–A, and Form SBSE–BD) are both shorter and should require that an SBS Entity expend less effort to research, complete, and file. It is anticipated that each SBS Entity would only need to research, complete, and file one of the proposed Forms.

Proposed Rule 15Fb2–3 would require that SBS Entities promptly amend their applications if they find that the information contained therein has become inaccurate. While SBS Entities may need to update their Forms periodically, each firm will only need to amend that aspect of the Form that has become inaccurate.

Paragraph (b) of proposed Rule 15Fb2–1 would require that each SBS Entity have a knowledgeable senior officer, after due inquiry, make an attestation on Form SBSE–C. As discussed more fully above, the Commission is proposing to require that a senior officer certify that, after due inquiry, he or she has reasonably determined that the SBS Entity has the operational, financial, and compliance capabilities to act as an SBS Dealer or major security-based swap participant, as applicable, and has documented the process by which he or she reached such determination. This certification process is designed to allow SBS Entities to register with the Commission quickly so that they are not required to suspend their security-based swap business, while providing the Commission with a basis to take final action on SBS Entity registration.

Proposed Rule 15Fb6–1 would require that SBS Entities obtain a questionnaire or application for employment executed by each of its associated persons who is involved in effecting security-based swaps on behalf of the SBS Entity that contains certain, specified information.[90] The proposed rule further would provide that the questionnaire or application shall serve as a basis for a background check of the associated person and be signed by the SBS Dealer's or major security-based swap participant's Chief Compliance Officer (or his or her designee). Proposed Rule 15Fb6–1 would require that each SBS Entity retain these employment questionnaires or applications until at least three years after the associated person has terminated his or her association with the SBS Entity. Finally, the CCO would need to certify (on Schedule G to Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable) that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification. SBS Entities would only need to fulfill these obligations for associated persons that effect or are involved in effecting security-based swaps on behalf of the SBS Entity.

Proposed Rule 15Fb2–4 would require that each nonresident SBS Entity must have in place at all times an agreement with a United States person appointing that person as the firm's U.S. agent for service of process. In addition, Proposed Rule 15Fb2–4 would require that each nonresident SBS Entity obtain an opinion of counsel stating that it can, as a matter of law, provide the Commission with access to records and the ability to conduct onsite examinations. These entities also must file an additional schedule (Schedule F) with their Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, to identify the firm's U.S. agent for service of process and to certify that the firm can, as a matter of law, provide the Commission with access to its books and records. In addition, each nonresident SBS Entity would be required to maintain its written agreement appointing a U.S. agent for service of process until at least three years after the agreement is terminated.

Pursuant to proposed Rule 15Fb1–1, each signatory to an electronic filing would be required to, when the

[90] *See supra* notes 55 and 56.

electronic filing is made, manually sign a signature page or other document adopting his or her signature that appears in typed form within the electronic filing. The SBS Entity would need to retain the manually-signed page until at least three years after the form or certification has been replaced or is no longer effective.

Proposed Rule 15Fb3–2 would require that an SBS Entity seeking to withdraw from Commission registration must file Form SBSE–W. Given that the cost and effort to register as an SBS Entity likely will be significant, the Commission believes that entities will not enter and exit this business regularly. Further, the Commission believes it is unlikely that any SBS Entity will seek to withdraw from registration within the first year.

Proposed temporary Rule 15Fb2–2T would only be adopted if a technological means to facilitate receipt and retention of applications is not functional by the time final rules are adopted. Pursuant to proposed temporary Rule 15Fb2–2T, each SBS Entity would need to file its application and certification in paper form. Proposed temporary Rule 15Fb2–2T also would require that each SBS Entity resubmit its application and certification in electronic form once a technological means to receive such documents becomes functional.

B. Proposed Use of Information

Information collected pursuant to proposed Rules 15Fb1–1 through 15Fb6–1 and through Forms SBSE, SBSE–A, SBSE–BD, and SBSE–C would allow the Commission to determine whether applicants meet the standards for registration, and to fulfill its oversight responsibilities. Further, Rule 15Fb3–2 and Form SBSE–W would allow the Commission to determine whether it is appropriate to allow an SBS Entity to withdraw from registration and to facilitate that withdrawal.

In addition, information collected pursuant to proposed Forms SBSE, SBSE–A, SBSE–BD, and SBSE–C would be made publicly available.

C. Respondents

Proposed Rule 15Fb1–1 through 15Fb6–1 would set forth rules to facilitate registration with the Commission of entities that fit the definition of SBS Dealer or major security-based swap participant.[91] Forms SBSE, SBSE–A, and SBSE–BD, as applicable, are applications through which SBS Entities would register with the Commission.

The Commission preliminarily believes, based on data obtained from DTCC and conversations with market participants, that approximately fifty entities may fit within the definition of SBS Dealer and up to five entities may fit within the definition of major security-based swap participant.[92] Further, the staff estimates, based on its experience and understanding of the unregulated swaps and security-based swaps markets, that the majority of firms that may register as SBS Entities (thirty-five) also will be engaged in the swaps business and will register with the CFTC as swap dealers or major swap participants.[93] In addition, persons holding securities positions may find it beneficial to hedge those positions with security-based swaps, so it may be beneficial for a broker-dealer to become an SBS Entity so that it can provide this option to its customers. Thus, Commission staff estimates that approximately sixteen broker-dealers will seek to register as SBS Entities.[94] Finally, given the costs of being a registered entity it may be less likely for an entity that is not otherwise registered with the CFTC or the Commission to register as an SBS Entity. Consequently, the Commission staff estimates that only four firms not otherwise registered with the CFTC or the Commission will seek to become an SBS Entity.

The Commission seeks comment on the reasonableness and accuracy of its estimates as to the number of participants in the security-based swap market that will be required to register with the Commission pursuant to proposed Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, and SBSE–BD, as applicable.

D. Total Initial and Annual Reporting and Recordkeeping Burdens

1. Burden Associated With Filing Application Forms

Proposed Rule 15Fb2–1 would require that each SBS Entity register with the Commission by filing an application. The Commission has attempted to reduce the burden associated with the application process by providing multiple forms for SBS Entities to use to register (Form SBSE, Form SBSE–A, or Form SBSE–BD). It is anticipated that each SBS Entity will only need to research, complete, and file one form.

While it is likely that the time necessary to complete these forms would vary depending on the nature and complexity of the entity's business, the Commission staff estimates (based on its experience relative to Form BD) that the average time necessary for an SBS Entity to research the questions, and complete and file a Form SBSE (including the Schedules[95] and DRPs) would be approximately one work week or forty hours.[96] As discussed above, the Commission estimates that approximately four firms would need to register using Form SBSE. Consequently, the total burden associated with filing Forms SBSE would be approximately 160 hours.[97]

The Commission staff believes that, as Form SBSE–A is shorter than the Form SBSE, it should take an SBS Entity approximately 80% of the time that it would take to research, complete, and file a Form SBSE (including the Schedules[98] and DRPs), or thirty two

[91] *See supra* notes 5–7.

[92] In the Intermediary Definitions Release, the Commission and the CFTC proposed rules to define a number of terms used in Title VII, including, among others, ''security-based swap dealer'' and ''major security-based swap participant.'' *See supra* note 5. As part of that proposal, the Commission preliminarily estimated that approximately 50 entities may be required to register as security-based swap dealers under the proposed rules. *See* Intermediary Definitions Release, n. 188 (75 FR 80174, at 80209 (Dec. 10, 2010)). We further estimated that no more than ten entities would have security-based swap positions large enough that they would have to monitor whether they meet the thresholds defining a major security-based swap participant. *See* Intermediary Definitions Release, (75 FR 80174, at 80207–8 (Dec. 10, 2010)). For purposes of these proposed rules, we conservatively estimate that, of the ten entities that would need to monitor their positions to determine whether they cross any of the definitional thresholds, five may actually meet the definition of ''major security-based swap participant.'' Depending on capital and other requirements for SBS Dealers and how businesses choose to respond to such requirements, the actual number of SBS Dealers may be significantly fewer. *See also Trade Acknowledgment and Verification of Security-Based Swap Transactions,* Exchange Act Release No. 63727 (Jan. 14, 2011), 76 FR 3859, at 3868 (Jan. 21, 2011); and *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Release No. 64766 (Jun. 29, 2011), 76 FR 42396, (Jul. 18, 2011), *as corrected by* Exchange Act Release No. 64766, 76 FR 46668 (Aug. 3, 2011).

[93] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Release No. 64766 (Jun. 29, 2011), 76 FR 42396, (Jul. 18, 2011), *as corrected by* Exchange Act Release No. 64766, 76 FR 46668 (Aug. 3, 2011).

[94] *Id.*

[95] Except Schedules F and G, which are dealt with separately below.

[96] The staff has previously estimated that the average time necessary for a broker-dealer to complete and file Form BD, the Form upon which Form SBSE was based, would be approximately three hours (and that estimate has been subject to notice and comment. *Broker-Dealer Registration and Reporting,* Exchange Act Release No. 41594 (July 2, 1999), 64 FR 37586.) However, some SBS Entities may not previously have been subject to regulation and thus may need more time to research the answers to complete Form SBSE and its schedules and DRPs.

[97] (40 hours × 4 SBS Entities) = 160 hours total.

[98] *See supra* note 95.

hours. As discussed above, the Commission estimates that approximately thirty-five firms would also be registered with the CFTC and therefore would need to register using Form SBSE–A. Consequently, the total burden associated with filing Forms SBSE would be approximately 1,120 hours.

The Commission staff believes that, as Form SBSE–BD is shorter than either Form SBSE or Form SBSE–A and broker-dealers who would be filing Form SBSE–BD are familiar with Commission terminology and forms, researching, completing, and filing a Form SBSE–BD should take an SBS Entity approximately 25% of the time that it would take to research, complete, and file a Form SBSE (including the Schedules [99]), or ten hours. As discussed above, the Commission estimates that approximately sixteen SBS Entities would need to register using Form SBSE–BD. Consequently, the total burden associated with filing Forms SBSE–BD would be approximately 160 hours.[100]

2. Burden Associated With Amending Application Forms

Proposed Rule 15Fb2–3 would require that SBS Entities amend their applications if they find that the information contained therein has become inaccurate. While SBS Entities may need to update their Forms periodically, each firm will only need to amend that aspect of the Form that has become inaccurate. Further, it likely will not cost a significant amount to make such changes because each firm will have already completed Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable, and will only need to amend that aspect of the Form that has become inaccurate. Based on the number of amendments the Commission receives annually on Form BD,[101] the Commission estimates that each SBS Entity will file approximately three amendments annually. While it is likely that the time necessary to file an amendment to Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable, may vary depending on the nature and complexity of the information to be amended, the staff estimates, based on experience relative to Form BD, that it likely would take an SBS Entity, on average, approximately one hour to amend its application each time it files an amendment. Consequently, the total burden associated with amending Forms SBSE, SBSE–A, and SBSE–BD, as applicable, would be approximately 165 hours.[102]

3. Burden Associated With Certification

Paragraph (b) of proposed Rule 15Fb2–1 would require that each SBS Entity have a knowledgeable senior officer certify that, after due inquiry, he or she has reasonably determined that the SBS Entity has the operational, financial, and compliance capabilities to act as an SBS Dealer or major security-based swap participant, as applicable, and has documented the process by which he or she has reached such determination. Each SBS Entity would need to provide this certification on Form SBSE–C only once. The Commission believes that the majority of the cost associated with this certification would arise from the review the senior officer conducts, or has others conduct, prior to certifying that the SBS Entity has the requisite operational, financial, and compliance capabilities. The senior officer would also need to certify that he or she has documented this process.

The Commission understands (based on the staff's experience with broker-dealers and other regulated entities) that, in satisfying other certification requirements, SBS Entities may use different processes, depending on the facts and circumstances of their business. Some SBS Entities may develop more or less robust process than others and, as a result, may incur higher or lower than average costs. Some SBS Entities may use a sub-certification process whereby the senior officer will not certify a firm-wide statement unless and until other persons responsible for certain activities in turn certify to the senior officer that the standard has been met, while other firms may use an internal or external audit-type process whereby a senior officer may choose to employ a third party to review an area subject to a firm-wide certification before submitting the certification. There may be other processes an SBS Entity could use to provide a basis for a senior officer's reasonable determination that the SBS Entity has the requisite capabilities that we have not specifically identified here. Many factors outside of the Commission's control [103] may determine whether an SBS Entity might choose to utilize an internal process, as opposed to an external process, to serve as a basis for the Senior Officer Certification. For purposes of this PRA, we will estimate that approximately half, or twenty-eight of the SBS Entities, may use an internal process and the other half, or twenty-seven of the SBS Entities, will use an external process.

The Commission believes that, regardless of whether an SBS Entity may choose to utilize an internal process, as opposed to an external process, to serve as a basis for the Senior Officer Certification, the burden associated with having a senior officer sign a certification likely would be approximately five hours.[104] The Commission has previously estimated that it would take a senior officer approximately twenty hours to review, document, and update compliance procedures,[105] which the staff believes would be analogous to reviewing documents provided either by subordinates or a third party to gain comfort necessary to sign the Senior Officer Certification.

Commission staff estimates, based on its experience relative to the securities and over-the-counter derivatives industries, that if a senior officer opted to conduct an internal review of the SBS Entity's operational, financial, and compliance capabilities, it would take approximately one hundred and seventy five additional hours for other SBS Entity employees to assess the SBS Entity's operational, financial, and compliance capabilities and provide the senior officer with sub-certifications or other documents he or she may request to obtain the necessary comfort before signing the Senior Officer Certification. Consequently, the Commission estimates that the one-time burden for the twenty-eight SBS Entities that utilize an internal review process would be approximately 5,600 hours for other SBS Entity employees to assess the SBS Entity's operational, financial, and compliance capabilities and provide the senior officer with documents, and for the senior officer to review those

[99] *Id.*

[100] (10 hours × 16 SBS Entities) = 160 hours total.

[101] On March 1, 2010 there were 5,163 broker-dealers registered with the Commission (based on Form BD data). The Commission received 20,666, 17,839, 16,702, 16,365, and 17,247 amended Forms BD during the fiscal years ending 9/30/2005, 9/30/2006, 9/30/2007, 9/30/2008 and 9/30/2009, respectively. ((20,666 + 17,839 + 16,702 + 16,365 + 17,247)/5 years)/5,163 broker-dealers = 3.44 amendments per broker-dealer per year.

[102] 1 hour × three per year × 55 SBS Entities = 165 hours.

[103] For instance, such factors could include: costs; how comfortable the senior officer may be with his or her subordinates within the SBS Entity's control structure; and how knowledgeable a senior officer may be regarding the SBS Entity's capabilities.

[104] *See, e.g., Risk Management Controls for Brokers or Dealers With Market Access,* Exchange Act Release No. 63241 (Nov. 3, 2010), 75 FR 69792, at 69816 (Nov. 15, 2010).

[105] *Id.*

documents and sign the Senior Officer Certification.[106]

The Commission has previously estimated that the burden associated with obtaining an internal control report from a third party would cost, on average, approximately $250,000.[107] The staff believes that an internal control report would be roughly analogous to a third party review of each SBS Entity capability included in the Senior Officer Certification; however, the staff believes the cost of a third party review of an SBS Entity's capabilities likely would be less than the cost of three separate internal control reviews because the third party review of capabilities would not require an accountant's opinion and because some economies of scale likely could be achieved when a third party reviews three capabilities for a single SBS Entity. Consequently, the staff estimates that the cost for an SBS Entity to obtain a third party review to provide its senior officer with the necessary comfort to sign the Senior Officer Certification would be approximately $600,000. Thus, the Commission estimates that the one-time burden for the twenty-seven SBS Entities that utilize an external review process would be approximately 675 hours [108] for the senior officer to review documents provided by the third party to gain the necessary comfort and to sign the Senior Officer Certification, and $16,200,000 to have a third party review the SBS Entity's operational, financial, and compliance capabilities and provide the SBS Entity with evidence sufficient to make the senior officer sufficiently comfortable to sign the Senior Officer Certification.

Thus, the total burden for all SBS Entities associated with the Senior Officer Certification would be approximately 6,275 hours and $16,200,000.

4. Burdens Relating to Associated Persons

Proposed Rule 15Fb6–1 would require an SBS Entity to obtain a questionnaire or application for employment executed by each of its associated persons who is involved in effecting security-based swaps on behalf of the SBS Entity that contains certain, specified information. The proposed rule further would provide that the questionnaire or application must be reviewed and signed by the SBS Dealer's or major security-based swap participant's Chief Compliance Officer. Finally, the CCO would need to certify (on Schedule G of its Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable) that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification. SBS Entities would only need to fulfill these obligations for associated persons that effect or are involved in effecting security-based swaps on behalf of the SBS Entity.[109] The Commission estimates (based on the staff's experience relative to the securities and OTC derivatives industries) that SBS Entities each have, on average, twenty-five associated persons that effect or are involved in effecting security-based swaps on behalf of the SBS Entity. The Commission believes that the information SBS Entities would need to obtain through these questionnaires is standard in the financial services industry, and is already collected by firms registered with the CFTC and the SEC. In addition, SBS Entities that are registered with the Commission or the CFTC must already perform background checks on their employees because of the prohibitions from employment of statutorily disqualified persons in the CEA and the Exchange Act.

The Commission staff estimates, based on its experience relative to the securities industry, that the average time necessary for an SBS Entity to review its employment questionnaire or application to verify that it contains all of the required information and to update the questionnaire would be approximately three hours. As SBS Entities that are already registered with the Commission or the CFTC already collect this information, the Commission estimates that the cost to all SBS Entities to review employment questionnaires or applications, verify that they contain all of the required information and update the questionnaires or applications, as necessary, would be approximately 12 hours.[110]

As discussed above, the Commission staff believes that most financial services firms already collect all or most of the information proposed Rule 15Fb6–1 would require that they collect. Consequently, the Commission estimates that the burden to require an SBS Entity's existing associated persons that effect or are involved in effecting security-based swaps on behalf of the SBS Entity to provide those few categories of information that they did not originally provide on their employment questionnaires or applications would be approximately one hour each.[111] As SBS Entities that are already registered with the Commission and the CFTC already collect this information from employees, the Commission estimates that the burden to all SBS Entities to obtain additional information from relevant associated persons, would be approximately 100 hours.[112]

The Commission staff estimates, based on the staff's experience relative to the securities industry, that it would take a CCO approximately one hour to review and sign a relevant employee's employment record. Consequently, the Commission estimates that the total burden to all SBS Entities to have their CCOs review and sign each associated person's employment record would be approximately 1,375 hours.[113]

On an ongoing basis, if employee turnover at an SBS Entity averages 12%,[114] each SBS Entity would need to perform background checks and have their CCO review and approve in writing three new associated persons' employment records per year. As stated

[106] (5 hours + 20 hours + 175 hours) × 28 SBS Entities = 5,600 hours.

[107] *See, e.g., Custody of Funds or Securities of Clients by Investment Advisers,* Advisers Act Release No. 2968 (Dec. 30, 2009), 75 FR 1456, at 1473 (Jan. 11, 2010). Depending on the facts and circumstances relating to an SBS Entity's business, third party service providers may use different methods to assess each of an SBS Entity's capabilities and report their findings to the SBS Entity, which may affect the cost of the review and the amount a third party charges an SBS Entity for this review.

[108] (5 hours + 20 hours) × 27 SBS Entities = 675 hours.

[109] *See supra* notes 55 and 56.

[110] 3 hours × 4 SBS Entities that are not registered with the Commission or CFTC = 12 hours.

[111] Commission staff believes that, as most firms already collect all or most of the information already, it likely would not take employees more than an hour each, on average, to provide any additional information. The staff believes the pay scales for broker-dealers and SBS Entities would likely be similar. As the categories of employees that could be required to provide additional information is diverse (*see supra* notes 55 and 56) the weighted-average cost of 46 of the positions included in Securities Industry and Financial Markets Association's (''SIFMA'') publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of an Attorney is approximately $260/hour. 1 hour × 25 associated persons × $260 = $6,500.

[112] One hour × 4 SBS Entities that are not registered with the Commission or CFTC × 25 associated persons effecting or involved in effecting security-based swaps on behalf of the SBS Entity = 100 hours.

[113] One hour × 25 associated persons × 55 SBS Entities = 1,375 hours.

[114] The staff notes that the Bureau of Labor Statistics Labor Turnover Survey indicates that turnover is presently in the range of 3.2%, however the staff believes that the present economic situation has likely driven turnover to a historically low level and that this broad statistic likely does not adequately represent actual turnover in the financial services sector. Consequently, the staff believes, based on its experience, that a higher number may be more appropriate.

above, the Commission estimates that the burden to have an SBS Entity's CCO review and sign each associated person's employment record would be approximately one hour. Thus, the ongoing annual burden to each SBS Entity would be approximately three hours [115] and the total cost to all SBS Entities to comply with Rule 15Fb6–1 on an ongoing basis would be approximately 165 hours annually.[116]

The Commission believes that as the CCO would already have reviewed and signed each employee's employment record, signing the required certification will not take a significant amount of time. Thus, Commission staff estimates, based on its experience relative to the securities industry, that it would take a CCO approximately one hour to certify on Schedule G that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification. Consequently, the Commission staff estimates that the total burden to all SBS Entities to complete this certification on Schedule G would be approximately 55 hours.[117]

5. Burdens on Nonresident SBS Entities

The Commission estimates, based on conversations with industry participants, that approximately 40 percent or 22 SBS Entities will be nonresident SBS Entities. Proposed Rule 15Fb2–4 would require that each nonresident SBS Entity file an additional schedule (Schedule F) with their Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, to identify its U.S. agent for service of process and to certify that the firm can, as a matter of law, provide the Commission with access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission.

Commission staff conservatively estimates, based on its experience relative to the securities industry and Form BD, that the average time necessary for a nonresident SBS Entity to complete and file Schedule F would be approximately one hour. Thus, the Commission estimates that the total burden for all nonresident SBS Entities approximately to complete and file Schedule F would be approximately 22 hours.[118]

In addition, nonresident SBS Entities would incur outside legal costs associated with obtaining an opinion of counsel. In previous releases, the Commission estimated that firms with a similar requirement would incur, on average, approximately $900 in outside legal costs to obtain an opinion of counsel.[119] This estimate originally related to the cost a foreign bank issuer would incur to obtain a legal opinion to provide to the Commission when seeking an exemption from the requirement to make certain additional disclosures.[120] Although the legal opinion for foreign bank issuers also would address privacy laws in the issuer's home jurisdiction that may preclude certain disclosures, upon further reflection, we believe that the legal opinion required for nonresident SBS Entities pursuant to the proposed rule would likely require additional research and analysis to prepare. Based on staff experience, the Commission estimates that each nonresident SBS Entity would incur, on average, approximately $25,000 in outside legal costs to obtain the necessary opinion of counsel, and that the total cost for all nonresident SBS Entities to obtain this opinion of counsel would be approximately $550,000.[121]

6. Burden Related to Retention of Manually Signed Signature Pages

Pursuant to proposed Rule 15Fb1–1, each signatory to an electronic filing must, when the electronic filing is made, manually sign a signature page or other document adopting his or her signature that appears in typed form within the electronic filing. This manually signed page must be retained by the SBS Entity until at least three years after the form or certification has been replaced or is no longer effective. It is likely that each SBS Entity would need to maintain at least three pages with manually signed signatures (the execution page of Form SBSE, SBSE–A, or SBSE–BD, as applicable, Schedule G, and the Form SBSE–C certification). In addition, nonresident SBS Entities also would need to retain a manually signed copy of Schedule F. As so few pages would need to be retained, the staff believes the burden associated with retaining them would not be significant. Thus, the Commission estimates that it would take each SBS Entity approximately 10 minutes annually to assure that these pages are retained, or a total of approximately 9 hours annually for all SBS Entities.[122]

7. Burden Associated With Filing Withdrawal Form

Given that the cost and effort to register as an SBS Entity will be significant, the Commission believes that entities will not enter and exit this business regularly. As the Form SBSE–W is only one page and consists of information readily available to SBS Entities, the staff estimates (based on experience relative to Form BD–W) that it likely would take an SBS Entity, on average, approximately one hour to complete and file a Form SBSE–W. While the Commission believes it is unlikely that any SBS Entity will withdraw from registration often or within the first year, solely for purposes of this PRA the Commission estimates that one SBS Entity may file Form SBSE–W to withdraw from registration annually and the total burden associated with completing and filing Form SBSE–W would be approximately one hour each year.

8. Burden Associated With Proposed Temporary Rule 15Fb2–2T

Proposed temporary Rule 15Fb2–2T would only be adopted if a technological means to facilitate receipt and retention of applications is not functional by the time final rules are adopted. Pursuant to proposed temporary Rule 15Fb2–2T, each SBS Entity would need to file its application and certification in paper form, and then resubmit its application and certification in electronic form once a technological means to receive such documents becomes functional.

The burden associated with completing and filing the forms once are discussed above. Thus, the additional burden associated with proposed temporary Rule 15Fb2–2T relate to electronic resubmission of the form.

The staff estimates that the costs associated with resubmitting each of the forms would be minimal, but would be contingent on the length of the form. Further, the additional time to file the certification (which consists of a single page) would not vary relative to the form required to be filed, and would not add significantly to the times required to file the registration forms. The

[115] One hour × three associated persons = three hours.

[116] Three hours × 55 SBS Entities = 165 hours.

[117] One hour × 55 SBS Entities = 55 hours.

[118] 1 hour × 22 nonresident SBS Entities = 22 hours.

[119] *Registration and Regulation of Security-Based Swap Execution Facilities,* Exchange Act Release No. 63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011); *Security-Based Swap Data Repository Registration, Duties, and Core Principles,* Exchange Act Release No. 63347 (Nov. 19, 2010), 75 FR 77306 (Dec. 10, 2010); *Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k),* Exchange Act Release No. 49616 (Apr. 26, 2004), 69 FR 24016 (Apr. 30, 2004). The $900 figure is based on an estimate of $400 an hour for legal services.

[120] *Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k),* Exchange Act Release No. 49616 (Apr. 26, 2004); 69 FR 24016 (Apr. 30, 2004).

[121] $25,000 × 22 SBS Entities = $550,000.

[122] (10 minutes × 55 SBS Entities)/60 minutes = 9.17 hours.

Commission staff preliminarily estimates, based on the staff's experience relative to the securities industry and Form BD, that the average time necessary for an SBS Entity to resubmit a Form SBSE would be approximately four hours. As Forms SBSE–A and SBSE–BD are shorter than Form SBSE, the Commission staff preliminarily estimates that resubmitting Form SBSE–A would take approximately two hours, and that resubmitting Form SBSE–BD would take approximately one hour. Thus, the Commission estimates that the total burden to all SBS Entities to resubmit their Forms SBSE, SBSE–A, or SBSE–BD, as applicable, would be approximately 102 hours.[123]

9. Request for Comment on Burden Estimates

The Commission seeks comment on the recordkeeping and reporting collection of information burdens associated with proposed Rule 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, and SBSE–BD, as applicable.

Q–173. What burdens, if any, would respondents incur with respect to system design, programming, expanding systems capacity, and establishing compliance programs to comply with proposed Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W, as applicable?

Q–174. Is it likely that SBS Entities will complete Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W, as applicable, themselves or is it more likely that they would obtain assistance in completing these forms from some outside entity (*e.g.,* outside counsel)? If an SBS Entity obtains assistance in completing the forms from an outside entity, what type of entity may be utilized and what may the relative costs to employ such an entity for this purpose be?

Q–175. Would there be different or additional burdens associated with the collection of information under Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W, as applicable, that a respondent does not currently undertake in the ordinary course of business that the Commission has failed to identify? If so, please both describe and quantify any additional burden(s).

Q–176. Are the burden and cost estimates regarding the review necessary to support the Senior Officer Certification appropriate? Are there other processes a senior officer may utilize to gain the necessary comfort to sign the Senior Officer Certification? If so, what other processes might be used and what are the advantages, burdens and/or costs of those other processes? Also, is the Commission's estimate accurate regarding how many SBS Entities may utilize an external, as opposed to an internal, review process?

Q–177. Would nonresident SBS Entities incur greater or lesser costs for the opinion of counsel? Would the cost more likely be closer to $900, as previously estimated? Are the costs likely to exceed $25,000?

E. Retention Period of Recordkeeping Requirements

Proposed Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W would require that each respondent retain certain records and information for three years.

F. Collection of Information Is Mandatory

Any collections of information required pursuant to proposed Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C would be mandatory to permit the Commission to determine whether applicants meet the standards for registration, and to fulfill its oversight responsibilities.

The collections of information required pursuant to proposed Rule 15Fb3–2 and Form SBSE–W would be mandatory to allow the Commission to determine whether it is in the public interest to allow an SBS Entity to withdraw from registration.

The collections of information required pursuant to proposed Rule 15Fb2–2T would be mandatory to provide a process for the Commission to facilitate registration of SBS Entities if an electronic system to facilitate registration is not functional by the time final registration rules are adopted.

G. Confidentiality

The Commission intends to make the information collected pursuant to proposed Rule 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W public.

H. Request for Comment

Pursuant to 44 U.S.C. 3505(c)(2)(B), the Commission solicits comment to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information shall have practical utility;

2. Evaluate the accuracy of our estimate of the burden of the proposed collection of information;

3. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

4. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them 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 should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–40–11. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File No. S7–40–11, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549–1090. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Economic Analysis

In response to the recent financial crisis, Congress passed the Dodd-Frank Act in July of 2010. Among other things, the Dodd-Frank Act is designed to strengthen oversight, improve consumer protections, and reduce systemic risks throughout the financial system. Title VII of the Dodd-Frank Act specifically addresses the OTC derivatives markets, including the market for security-based swaps, and requires the Commission to undertake a number of rulemakings to establish a regulatory framework for SBS Entities.

In promulgating the provisions of Section 764 of the Dodd-Frank Act, Congress established a mandatory registration regime for SBS Entities but left the form and manner of such registration within the discretion of the Commission. In determining the form and manner of such registration, the Commission may require ''such information, as the Commission

[123] (2 hours × 35 SBS Entities already registered with the CFTC) + (1 hour × 16 SBS Entities already registered with the Commission) + (4 hours × 4 SBS Entities not otherwise registered with either the Commission or the CFTC) = 102 hours.

considers necessary concerning the business in which the applicant is or will be engaged.'' [124] The Dodd-Frank Act also requires that SBS Entities ''continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.'' [125] Section 764 also provides that registrations ''shall expire at such time as the Commission may prescribe by rule,'' [126] and prohibits SBS Entities from allowing persons associated with it that are ''subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the [SBS Entity if the entity] knew, or in the exercise of reasonable care should have known, of the statutory disqualification.'' [127] Finally, the Dodd-Frank Act provides the Commission with additional broad authority to effect registration and regulation of SBS Entities.[128]

Today, the Commission is proposing new rules and forms that provide a process for registration of SBS Entities. This process would require that SBS Entities apply for registration by submitting a Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable. Further, this process would allow SBS Entities to register conditionally or on an ongoing basis, as necessary. In addition, each SBS Entity seeking ongoing registration would need to submit to the Commission a certification on Form SBSE–C, signed by a knowledgeable senior officer.

In drafting these rules the Commission sought to design a registration process that is similar to other registration processes administered by the Commission. To the extent market participants are familiar with these existing registration processes, we believe that using similar processes to register SBS Entities would create efficiencies for market participants. Many of the proposed rules were drafted based on rules applicable to broker-dealers. Similarly, the draft forms were based on Forms BD and BDW. However, the Commission also has sought to assure that the staff has information sufficient to make a determination as to whether registration should be granted or denied. Thus, the Form SBSE differs from Form BD in that it requests information specific to the SBS business and does not request information specific to the broker-dealer business. The Commission also sought to assure that the proposed rules, the forms, and the process generally are as clear as possible so as to minimize confusion. The Commission has sought to minimize, to the extent possible, duplication and costs that the rules may impose on firms. Finally, burdens and costs that have been estimated for PRA purposes are included in the broader costs and benefits discussion that follows because we believe, as the registration process would largely be forms-based, it is appropriate to include them. The Commission is sensitive to the costs and benefits imposed by its rules.

A. Benefits

The proposed rules and forms described in this section would be issued pursuant to a specific grant of rulemaking authority in the Dodd-Frank Act. As indicated above, the forms were based on Forms BD and BDW, which broker-dealers are familiar with and which are similar to the Form 7–R that futures and commodities firms use to register with the CFTC. Significantly, the Commission is proposing the use of multiple registration forms to limit the amount of duplication and costs imposed on firms already registered with the Commission as a broker-dealer or with the CFTC as a swap dealer or major swap participant. The Commission considered using only one form to facilitate registration, but we believe using multiple forms would provide a benefit to firms because it would reduce the costs to register.

In addition the proposed use of multiple forms is designed to allow firms already registered with the SEC as broker-dealers or registered or registering with the CFTC as swap dealers or swap participants to submit or utilize forms they have already completed to facilitate registration with the Commission. This use of existing forms would allow the Commission to obtain the information it needs to determine whether to grant registration without requiring the applicant to duplicate substantially the same information that they have already provided to regulators for another purpose.

The proposed rules and forms would require that SBS Entities provide certain standardized data (including disciplinary information) to the Commission. The Commission would then make this information public. This would provide SBS counterparties and the marketplace with additional, comparable information on all SBS Entities (for instance, by highlighting previously unrecognized comparative strengths and weaknesses) which would allow them to make more informed choices with respect to counterparties and collateral. The Commission also believes that this may promote competition by leveling the playing field for market participants who may have disparate access to information regarding each SBS Entity. In addition, making such standardized information on SBS Entities public would enable counterparties and the marketplace to expend less time and money to independently obtain and compile information on SBS Entities to use in making such choices.

Requiring the reporting of standardized information through these forms also will allow the Commission to identify the risk characteristics of each SBS Entity, which should help the Commission focus examinations and other oversight resources more efficiently and effectively.

Once SBS Entities are registered, they will be subject to standardized requirements that set a baseline level of, among other things, internal controls, capital and margin levels for all SBS Entities. The registration and regulation of SBS Entities also may promote capital formation by providing market participants with certain, uniform information regarding registered SBS Entities (as described above) and assuring market participants that registered SBS Entities meet established standards. By facilitating oversight of SBS Entities, registration and regulation of these entities also could increase counterparty trust, and may encourage more counterparties and eligible contract participants to enter the SBS marketplace. It also may be beneficial if SBS entities that are not capable of meeting, or are unwilling to meet, their regulatory obligations exit the market.

B. Costs

Although the Commission believes that registration and regulation of SBS Entities would result in significant benefits to customers of and counterparties to SBS Entities, investors, eligible contract participants and the market for SBS, the Commission recognizes that the proposed registration rules and forms would also entail costs.

The Commission preliminarily estimates that SBS Entities would incur costs associated with: (i) Researching, completing, and filing the forms, (ii) reviewing, completing and submitting the required certification, and documenting the review process, (iii) obtaining or compiling the required questionnaires or employment applications, having the CCO review the questionnaires and certify that no relevant associated person is subject to

[124] 15 U.S.C. 78o–10(b)(2)(A).

[125] 15 U.S.C. 78o–10(b)(2)(B).

[126] 15 U.S.C. 78o–10(b)(3).

[127] 15 U.S.C. 78o–10(b)(6).

[128] 15 U.S.C. 78o–10(b)(4) and (d).

statutory disqualification, (iv) the requirements that nonresident SBS Entities obtain an agreement for U.S. service of process and an opinion of counsel stating that they can provide the Commission with access to records, (v) the requirement to retain manually signed signature pages, and (vi) the requirements associated with filing forms in paper format and resubmitting those forms electronically if the Commission does not have a technological means to receive applications electronically by the time final registration rules are adopted.

The Commission preliminarily believes that the proposed amendments may impose a burden on competition for smaller SBS Entities to the extent that they impose relatively fixed costs, which could represent a higher percentage of net income for smaller SBS Entities. Registration costs may also impact those SBS Entities that are not already registered under another area of their business model to a greater degree than they would impact SBS Entities that have previously registered under another regulatory regime. The SBS Entity registration requirement may cause some market participants that are not capable of meeting their operational, financial and/or regulatory obligations to exit the market. However, the Commission believes that any reduction in competition resulting from an exit from the market by SBS Entities that are not capable of meeting, or that are unwilling to meet, their regulatory obligations is a necessary and appropriate burden on competition.

1. Costs Attributable to Filing the Forms

Proposed Rule 15Fb2–1 would require that each SBS Entity register with the Commission by filing Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable. Firms must file these forms electronically, which also should reduce the associated costs because SBS Entities will not incur costs associated with copying or postage. The Commission preliminarily believes that it would cost each SBS Entity approximately $11,800 to complete and file the Form SBSE (including the Schedules [129] and DRPs).[130] As stated previously, the Commission has attempted to reduce costs associated with the application process by providing multiple forms for SBS Entities to use to register. The alternative forms (Form SBSE–A, and Form SBSE–BD) are both shorter and should require that an SBS Entity expend less effort to research, complete, and file. Consequently, the Commission preliminarily believes that it would cost each firm approximately $9,440 to complete Form SBSE–A [131] (including the Schedules [132] and DRPs) and approximately $2,950 to complete Form SBSE–BD (including the Schedules).[133] It is anticipated that each SBS Entity will only need to research, complete, and file one Form, and that it will update that Form, as necessary, as described below.

The Commission preliminarily believes, based on its understanding of the security-based swap market and conversations with industry participants, that approximately fifty firms will fit the definition of SBS dealer and approximately five firms will fit the definition of major security-based swap participant. Further, based on its understanding of the securities-based swap market, the Commission believes that the majority of firms that may register as SBS Entities also will be engaged in the swaps business and will register with the CFTC as swap dealers or major swap participants. In addition, persons holding securities positions may find it beneficial to hedge those positions with security-based swaps, so it may be beneficial for a broker-dealer to become an SBS Entity so that it can provide this option to its customers. However, given the costs of being a registered entity, it may be less likely for an entity that is not otherwise registered to register as an SBS Entity. Consequently, the Commission believes that thirty-five SBS Entities will register with the Commission using Form SBSE–A, twelve SBS Entities will register with the Commission using Form SBSE–BD, and eight SBS Entities will register with the Commission using Form SBSE. Thus, the total estimated cost to all entities to research, complete, and file Forms to register as SBS Entities would be approximately $424,800.[134]

Proposed Rule 15Fb2–3 would require that SBS Entities amend their applications if they find that the information contained therein has become inaccurate. While SBS Entities may need to update their Forms periodically, it likely would not cost a significant amount to make such changes because each firm will have already completed Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable, and would only need to amend that aspect of the Form that has become inaccurate. Based on the number of amendments the Commission receives annually on Form BD,[135] the Commission estimates that each SBS Entity would file approximately three amendments annually. Consequently, the Commission estimates that the cost for each SBS Entity to complete and file amendments to its forms is

[129] *See supra* note 95.

[130] The staff has previously estimated that the average time necessary for a broker-dealer to complete and file Form BD, the Form upon which Form SBSE was based, would be approximately three hours (and that estimate was been subject to notice and comment. *Broker-Dealer Registration and Reporting,* Exchange Act Release No. 41594 (July 2, 1999), 64 FR 37586.) However, SBS Entities have not previously been subject to regulation and may need significantly more time to research the answers to complete Form SBSE and its schedules and DRPs. Thus, while it is likely that the time necessary to complete Form SBSE would vary depending on the nature and complexity of the entity's business, Commission staff estimates that the average time necessary for an SBS Entity to research the questions, and complete and file a Form SBSE would be approximately one work week or forty hours. The staff believes that an SBS Entity would have a Compliance Manager complete and file the form's application on Form SBSE, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Compliance Manager is approximately $295/hour. 40 hours × $295 = $11,800.

[131] The Commission staff believes that, as Form SBSE–A is shorter than the Form SBSE, it should take an SBS Entity less time to research the questions, and complete and file a Form SBSE–A. Thus, while it is likely that the time necessary to complete Form SBSE–A would vary depending on the nature and complexity of the entity's business, the staff estimates that researching, completing, and filing Form SBSE–A would take approximately 80% of the time that it would take to research, complete, and file a Form SBSE, or thirty two hours. The staff believes that an SBS Entity would have a Compliance Manager complete and file the form's application on Form SBSE–A, and that the pay scales for broker-dealers and SBS Entities would likely be similar. *See supra* note 130. 32 hours × $295 = $9,440.

[132] *See supra* note 95.

[133] *See supra* note 95. The Commission staff believes that, as Form SBSE–BD is shorter than either Form SBSE or Form SBSE–A, it should take an SBS Entity less time to research the questions, and complete and file a Form SBSE–BD. In addition, broker-dealers who would be filing Form SBSE–BD are familiar with Commission terminology and Forms. Thus, while it is likely that the time necessary to complete Form SBSE–BD would vary depending on the nature and complexity of the entity's business, the staff estimates that researching, completing, and filing Form SBSE–BD would take approximately 25% of the time that it would take to research, complete, and file a Form SBSE, or ten hours. The staff believes that an SBS Entity would have a Compliance Manager complete and file the form's application on Form SBSE–BD. *See supra* note 130. 10 hours × $295 = $2,950.

[134] $424,800 = (35 × $9,440) + (16 × $2,950) + (4 × $11,800).

[135] On March 1, 2010 there were 5,163 broker-dealers registered with the Commission (based on Form BD data). The Commission received 20,666, 17,839, 16,702, 16,365, and 17,247 amended Forms BD during the fiscal years ending 9/30/2005, 9/30/2006, 9/30/2007, 9/30/2008 and 9/30/2009, respectively. ((20,666 + 17,839 + 16,702 + 16,365 + 17,247)/5 years)/5,163 broker-dealers = 3.44 amendments per broker-dealer per year.

approximately $885.[136] Thus, the Commission estimates that it would cost all SBS Entities approximately $48,675 annually to complete and file these amendments.[137]

Proposed Rule 15Fb3–1 would require an SBS Entity seeking to withdraw from Commission registration to file Form SBSE–W. Given that the cost and effort to register as an SBS Entity will be significant, the Commission believes that entities will not enter and exit this business regularly. Further, the Commission believes it is unlikely that any SBS Entity will withdraw from registration within the first year. However, there will be a cost associated with withdrawing from registration as an SBS Entity must file a Form SBSE–W to do so. As the Form SBSE–W is only one page and consists of information readily available to SBS Entities, the Commission estimates that the cost for an SBS Entity to complete and file a Form SBSE–W would be approximately $295.[138]

The Dodd-Frank Act clearly requires registration of SBS Entities. All other entities that register with the Commission do so by filing some type of application, which may be a standardized form (*e.g.,* Form TA–1, Form ADV and Form BD). The Commission generally requires that registered entities amend these forms to correct inaccurate information either as necessary or periodically. Further, all other entities that with to withdraw from Commission registration must file some type of notice with the Commission, which may be a standardized form (*see, e.g.,* Form TA–W, Form ADVW, and Form BDW). Thus, it is likely that Congress contemplated or intended that the Commission establish this type of registration regime. The Commission believes the use of conditional registration and the certification process using Form SBSE–C is a reasonable and relatively low cost method to assure that firms have operational, financial and compliance capabilities to act as SBS Entities and implement adequate procedures to comply with federal securities laws and provide the Commission with a basis to take final action on SBS Entity registration.

2. Costs of Certification

Paragraph (b) of proposed Rule 15Fb2–1 would require that each SBS Entity have a knowledgeable senior officer certify that, after due inquiry, he or she has reasonably determined that the SBS Entity has the operational, financial, and compliance capabilities to act as an SBS Dealer or major security-based swap participant, as applicable, and has documented the process by which he or she has reached such determination. Each SBS Entity would need to provide this certification on Form SBSE–C only once. The Commission believes that the majority of the cost associated with this certification would arise from the review the senior officer conducts, or has others conduct, prior to certifying that the SBS Entity has the requisite operational, financial, and compliance capabilities.[139] The senior officer would also need to certify that he or she has documented this process.

The Commission understands (based on the staff's experience with broker-dealers and other regulated entities) that, in satisfying other certification requirements, SBS Entities may use different processes, depending on the facts and circumstances of their business. Some SBS Entities may develop more or less robust process than others and, as a result, may incur higher or lower than average costs. Some SBS Entities may use a sub-certification process whereby the senior officer will not certify a firm-wide statement unless and until other persons responsible for certain activities in turn certify to the senior officer that the standard has been met, while other firms may use an internal or external audit-type process whereby a senior officer may choose to employ a third party to review an area subject to a firm-wide certification before submitting the certification. There may be other processes an SBS Entity could use to provide a basis for a senior officer's reasonable determination that the SBS Entity has the requisite capabilities that we have not specifically identified here. Many factors outside of the Commission's control[140] may determine whether an SBS Entity might choose to utilize an internal process, as opposed to an external process, to serve as a basis for the Senior Officer Certification. For purposes of this economic analysis, we will estimate that approximately half, or twenty-eight of the SBS Entities, may use an internal process and the other half, or twenty-seven of the SBS Entities, will use an external process.

The Commission believes that, regardless of whether an SBS Entity may choose to utilize an internal process, as opposed to an external process, to serve as a basis for the Senior Officer Certification, it will cost approximately $10,450 on average for a senior officer to review documents provided either by subordinates or by a third party to gain the comfort necessary to sign and to sign the Senior Officer Certification.[141] The Commission estimates that, if an SBS Entity opted to conduct an internal review of the SBS Entity's operational, financial and compliance capabilities, it will cost each SBS Entity approximately an additional $73,150[142] for other SBS

[136] While it is likely that the time necessary to file an amendment to Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable may vary depending on the nature and complexity of the information to be amended, the staff estimates, based on experience, that it likely would take an SBS Entity, on average, approximately one hour to amend its application each time it files an amendment. The staff believes that an SBS Entity would have a Compliance Manager complete and file amendments to the SBS Entity's forms, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Compliance Manager is approximately $295/hour. 1 hours × $295 × three per year = $885.

[137] $885 × 55 SBS Entities = $48,675.

[138] The staff estimates, based on experience, that it likely would take an SBS Entity, on average, approximately one hour to complete and file a Form SBSE–W. The staff believes that an SBS Entity would have a Compliance Manager complete and file Form SBSE–W, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Compliance Manager is approximately $295/hour. 1 hour × $295 = $295.

[139] *See supra* note 42.

[140] *See supra* note 103.

[141] The Commission has previously estimated that the burden associated with having a senior officer sign a certification likely would be approximately five hours. *See supra* note 104. The Commission has also estimated that it would take a senior officer approximately twenty hours to review, document, and update compliance procedures, (*Id.*) which the staff believes would be analogous to reviewing documents provided either by subordinates or a third party to gain comfort necessary to sign the Senior Officer Certification, and to document this review. The staff believes the pay scales for broker-dealers and SBS Entities would likely be similar, and that the pay of a Chief Compliance Officer likely would be similar to the amount paid to other senior officers. According to the SIFMA's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Chief Compliance Officer is approximately $418/hour. 25 hours × $418 = $10,450.

[142] Commission staff estimates, based on its experience relative to the securities and OTC derivatives industries, that if a senior officer opted to conduct an internal review of the SBS Entity's operational, financial, and compliance capabilities, it would take approximately one hundred and seventy five additional hours for other SBS Entity employees to assess the SBS Entity's operational, financial, and compliance capabilities and provide the senior officer with whatever sub-certifications or other documents he or she may request to obtain the necessary comfort before signing the Senior

Continued

Entity employees to assess the SBS Entity's operational, financial, and compliance capabilities and provide the senior officer with whatever sub-certifications or other documents he or she may request to obtain the necessary comfort before signing the Senior Officer Certification. Alternatively, if an SBS Entity opted to conduct an external review of the SBS Entity's operational, financial and compliance capabilities, the Commission estimates that it will cost each SBS Entity approximately an additional $600,000.[143] Thus, the Commission estimates that this certification requirement will cost all SBS Entities a total of approximately $18,822,950.[144]

In addition to these costs, there may be additional costs and benefits relating to certification that are more difficult to quantify. For instance, the requirement to certify as to capabilities may impose costs on SBS Entities relating to the legal uncertainty and potential liability that arises from the possibility that a regulator may find that the certification was inaccurate or false. However, a potential benefit would be to focus senior officers' attention to assuring that an SBS Entity conducts its business in accordance with the certification language. In addition, the more robust the process and meaningful the review of an SBS Entity's capabilities, the more likely that review will fulfill the Commission's goals in proposing the Senior Officer Certification requirement, and the more likely the process will help the SBS Entity to strengthen its capabilities, processes and controls which could serve to decrease operational, financial, and compliance risks.

In addition, the Senior Officer Certification is designed to help assure the Commission, potential investors in, customers of, and counterparties to an SBS Entity that the SBS Entity has the requisite capabilities to act in that capacity. By providing this assurance after a senior officer has performed due inquiry, the Senior Officer Certification requirement also could prevent entities who may be more likely to fail because they do not have the requisite capabilities from registering with the Commission, which could help prevent disorderly and unstable markets. Further, the Senior Officer Certification may enhance market participants' ability to assess the counterparty credit risk associated with a particular SBS Entity counterparty. In this way, the Senior Officer Certification should help to protect market participants from SBS Entities that are not competent to engage in that business, lack the financial resources to do so, or are unable or unwilling to comply with applicable law.

3. Costs Relating to Associated Persons

The Dodd-Frank Act makes it unlawful for SBS Entities to permit any associated person subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf if it knew or, in the exercise of reasonable care should have known, of the statutory disqualification. Proposed Rule 15Fb6–1 would require that SBS Entities obtain a questionnaire or application for employment executed by each of its associated persons who is involved in effecting security based swaps on behalf of the SBS Entity that contains certain, specified information. The proposed rule further would provide that the questionnaire or application must be reviewed and signed by the SBS Dealer's or major security-based swap participant's Chief Compliance Officer. Finally, the CCO would need to certify that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification. SBS Entities would only need to fulfill these obligations for associated persons that effect or are involved in effecting security based swaps on behalf of the SBS Entity.[145] The Commission estimates, based on the staff's experience in dealing with entities that likely will need to register as SBS Entities, that SBS Entities each have, on average, 25 associated persons that effect or are involved in effecting security-based swaps on behalf of the SBS Entity. The Commission believes that the information SBS Entities would need to obtain through these questionnaires is fairly standard in the financial services industry, and is already collected by firms registered with the CFTC and the SEC. In addition, SBS Entities that are registered with the Commission or the CFTC must already perform background checks on their employees because of the prohibitions from employment of statutorily disqualified persons in the CEA and the Exchange Act.

The Commission estimates that the cost for each SBS Entity to review its employment questionnaire or application to verify that it contains all of the required information and to update the questionnaire, as necessary, to obtain any information not presently included on that questionnaire would be approximately $950.[146] As SBS Entities that are already registered with the Commission and the CFTC already collect this information, the Commission estimates that the cost to all SBS Entities to review employment questionnaire or application forms, verify that they contain all of the required information and update the questionnaire or application forms, as necessary, would be approximately $3,800.[147]

The Commission estimates that the cost to require an SBS Entity's existing associated persons that effect or are

Officer Certification. The staff believes the pay scales for broker-dealers and SBS Entities would likely be similar, and that the pay of a Chief Compliance Officer likely would be similar to the amount paid to other senior officers. According to the SIFMA's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Chief Compliance Officer is approximately $418/hour. For purposes of this estimate, we will assume that those a senior officer may consult with are paid at approximately the same level. 175 hours × $418 = $73,150.

[143] The Commission has previously estimated that the burden associated with obtaining an internal control report from a third party would cost approximately $250,000. *See supra* note 107. The staff believes that an internal control report would be roughly analogous to a third party review of each SBS Entity capability included in the Senior Officer Certification; however, the staff believes the cost of a third party review of an SBS Entity's capabilities likely would be less than the cost of three separate internal control reviews because the third party review of capabilities would not require an accountant's opinion and because some economies of scale likely could be achieved when a third party reviews three capabilities for a single SBS Entity. Depending on the facts and circumstances of an SBS Entity's business, third party service providers may use different methods to assess each of an SBS Entity's capabilities and report their findings to the SBS Entity, which may affect the cost of the review and the amount a third party charges an SBS Entity for this review. Consequently, the staff estimates that the cost for an SBS Entity to obtain a third party review to provide its senior officer with the necessary comfort to sign the Senior Officer Certification would be approximately $600,000 to have a third party review the SBS Entity's operational, financial, and compliance capabilities and provide the SBS Entity with evidence sufficient to make the senior officer sufficiently comfortable to sign the Senior Officer Certification.

[144] ($10,450 × 55 SBS Entities) + ($73,150 × 28 SBS Entities) + ($600,000 × 27 SBS Entities) = $574,750 + $2,048,200 + $16,200,000 = $18,822,950.

[145] *See supra* notes 55 and 56.

[146] Commission staff estimates, based on its experience, that the average time necessary for an SBS Entity to review its employment questionnaire or application to verify that it contains all of the required information and to update the questionnaire would be approximately three hours. The staff believes that an SBS Entity would have an Attorney perform this review and update, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of an Attorney is approximately $316/hour. 3 hours × $316 = $948.

[147] $950 × 4 SBS Entities that are not registered with the Commission or CFTC = $3,800.

involved in effecting security-based swaps on behalf of the SBS Entity to provide those few categories of information that they did not originally provide on their employment questionnaires or applications would be approximately $6,500.[148] As SBS Entities that are already registered with the Commission and the CFTC already collect this information from employees, the Commission estimates that the cost to all SBS Entities to obtain additional information from relevant associated persons, would be approximately $52,000.[149]

The Commission estimates that the cost to have an SBS Entity's CCO review and sign each associated person's employment record would be approximately $418.[150] The Commission estimates that the cost to all SBS Entities to have their CCOs review and sign each associated person's employment record would be approximately $574,750.[151]

On an ongoing basis, if employee turnover at an SBS Entity averages 12%, each SBS Entity would need to perform background checks and have its CCO review and sign three new associated persons' employment records per year. As stated above, the Commission estimates that the cost to have an SBS Entity's CCO review and sign each associated person's employment record would be approximately $418. Thus, the cost of each new associated person would be approximately $418, the ongoing annual cost to each SBS Entity would be approximately $1,254 [152] and the total cost to all SBS Entities to comply with Rule 15Fb6–1 on an ongoing basis would be approximately $68,970.[153]

The Commission believes that as the CCO would already have reviewed and signed each employee's employment record, signing the certification on Schedule G will not take a significant amount of time. Thus, the Commission estimates that the cost for each SBS Entity to have its CCO certify on Schedule G that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification would be approximately $418.[154] Consequently, the total cost for all SBS Entities to have their CCO sign this certification on Schedule G would be approximately $22,990.[155]

The Commission believes that, in order to comply with the prohibition in the Dodd-Frank Act from having statutorily disqualified associated persons that effect or are involved in effecting security-based swaps, SBS Entities would need to at least obtain the information required by proposed Rule 15Fb6–1 and perform a background check. Having the CCO approve the employment applications and provide the Commission with a certification would provide the Commission with a degree of comfort that the SBS Entity is complying with the prohibition in the Act and aid it in its oversight of SBS Entities.

4. Costs to Nonresident SBS Entities

The Commission estimates, based on conversations with industry participants, that approximately 40 percent or twenty-two SBS Entities will be nonresident SBS Entities. Proposed Rule 15Fb2–4 would require that each nonresident SBS Entity must obtain an agreement with a United States person appointing that person as the firm's U.S. agent for service of process. In addition, Proposed Rule 15Fb2–4 would require that each nonresident SBS Entity obtain an opinion of counsel stating that it can provide the Commission with access to records. These entities also must file an additional schedule (Schedule F) with their Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, to identify the firm's U.S. agent for service of process and to certify that the firm can, as a matter of law, provide the Commission with access to its books and records.

The Commission estimates, based on internet research,[156] that it would cost each nonresident SBS Entity approximately $125 annually to appoint and maintain a relationship with a U.S. agent for service of process. Consequently, the total cost for all nonresident SBS Entities to appoint and maintain relationships with U.S. agents for service of process is approximately $2,750 per year.[157]

In addition, nonresident SBS Entities would incur outside legal costs associated with obtaining an opinion of counsel. In previous releases, the Commission estimated that firms with a similar requirement would incur, on average, approximately $900 in outside legal costs to obtain an opinion of counsel.[158] This estimate originally related to the cost a foreign bank issuer would incur to obtain a legal opinion to provide to the Commission when seeking an exemption from the requirement to make certain additional disclosures.[159] Although the legal opinion for foreign bank issuers also would address privacy laws in the issuer's home jurisdiction that may preclude certain disclosures, upon further reflection, we believe that the legal opinion required for nonresident SBS Entities pursuant to the proposed rule would likely require additional research and analysis to prepare. Based on staff experience, the Commission estimates that each nonresident SBS Entity would incur, on average,

[148] Commission staff believes that, as most firms already collect all or most of the information already, it likely would not take employees more than an hour each, on average, to provide any additional information. The staff believes the pay scales for broker-dealers and SBS Entities would likely be similar. As the categories of employees that could be required to provide additional information is diverse (*see supra* notes 55 and 56) the weighted-average cost of 46 of the positions included in SIFMA's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of an Attorney is approximately $260/hour. 1 hour × 25 associated persons × $260 = $6,500.

[149] $6,500 × 4 SBS Entities that are not registered with the Commission or CFTC = $26,000.

[150] Commission staff estimates, based on staff experience, that it would take a CCO approximately one hour to review and approve a relevant employee's employment record. The staff believes the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Chief Compliance Officer is approximately $418/hour. 1 hour × $418 = $418.

[151] $418 × 25 associated persons × 55 SBS Entities = $574,750.

[152] $418 × 3 associated persons = $1,254.

[153] $1,254 × 55 SBS Entities = $68,970.

[154] Commission staff conservatively estimates that it would take a CCO approximately one hour to certify that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification. The staff believes the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Chief Compliance Officer is approximately $418/hour. 1 hour × $418 = $418.

[155] $418 × 55 SBS Entities = $22,990.

[156] *See, e.g., http://www.incnow.com/registered_agent.shtml,* and *http://www.ailcorp.com/registeredagent.htm.* The staff sought Web sites that provided pricing information and a comprehensive description of their registered agent services.

[157] $125 per nonresident SBS Entity × 22 nonresident SBS Entities = $2,750.

[158] *Security-Based Swap Data Repository Registration, Duties, and Core Principles,* Exchange Act Release No. 63347 (Nov. 19, 2010); 75 FR 77306 (Dec. 10, 2010); *Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k),* Exchange Act Release No. 49616 (Apr. 26, 2004); 69 FR 24016 (Apr. 30, 2004). The $900 figure is based on an estimate of $400 an hour for legal services.

[159] *Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k),* Exchange Act Release No. 49616 (Apr. 26, 2004); 69 FR 24016 (Apr. 30, 2004).

approximately $25,000 in outside legal costs to obtain the necessary opinion of counsel, and that the total cost for all nonresident SBS Entities to obtain this opinion of counsel would be approximately $550,000.[160]

The Commission estimates that it would cost each nonresident SBS Entity approximately $295 to complete Schedule F.[161] Thus, the Commission estimates that the total cost for all nonresident SBS Entities approximately $6,490.[162]

While the Dodd-Frank Act does not distinguish between resident and nonresident SBS Entities, it clearly contemplates Commission oversight of registered SBS Entities. The Commission's experience with other nonresident registrants has led the staff to believe that these requirements are necessary and appropriate to allow the Commission to adequately oversee nonresident SBS Entities.

5. Costs of Retaining Manually Signed Signature Pages

Pursuant to proposed Rule 15Fb1–1, each signatory to an electronic filing would be required to, when the electronic filing is made, manually sign a signature page or other document adopting his or her signature that appears in typed form within the electronic filing. Each SBS Entity must retain these manually signed pages until at least three years after the form or certification has been replaced or is no longer effective. It is likely that each SBS Entity would need to maintain at least three pages with manually signed signatures (the execution page of Form SBSE, SBSE–A, or SBSE–BD, as applicable, Schedule G, and the Form SBSE–C certification). In addition, nonresident SBS Entities also will need to retain a manually signed copy of Schedule F. As so few pages would need to be maintained pursuant to proposed Rule 15Fb1–1, Commission staff does not believe the costs associated with retaining them would be significant. Thus, the Commission estimates that it would cost each SBS Entity approximately $49.17 annually assure that it is complying with the requirement to retain these manually signed signature pages,[163] or a total of approximately $2,704 annually for all SBS Entities.[164]

6. Costs Associated With Proposed Temporary Rule 15Fb2–2T

Proposed temporary Rule 15Fb2–2T would only be adopted if a technological means to facilitate receipt and retention of applications is not functional by the time final rules are adopted. Pursuant to proposed temporary Rule 15Fb2–2T, each SBS Entity would need to file its application and certification in paper form. Proposed temporary Rule 15Fb2–2T also would require that each SBS Entity resubmit its application and certification in electronic form once a technological means to receive such documents becomes functional.

The costs associated with completing the forms are discussed above. Thus, the additional costs associated with proposed temporary Rule 15Fb2–2T would include the postage cost to send a paper form and the personnel costs associated with later resubmitting the form electronically.

The postage costs likely would be driven by the number of pages each SBS Entity would need to send, which could vary significantly depending on the number of DRPs each firm must include with its Form. The staff conservatively estimates that each SBS Entity may incur, on average, approximately $5 to send its form to the Commission. As the certification consists of a one page Form SBSE–C, the staff estimates that it likely would cost an SBS Entity approximately $.50 to send its certification to the Commission. The Commission hopes that it will have a technological means to receive these forms functional relatively quickly; however each SBS Entity may also need to file an amendment before that occurs. As any amendment would likely include few pages because the SBS Entity only would need to provide updates to those items which become inaccurate, the staff estimates that it would cost each SBS Entity approximately $.50 to send an amendment to the Commission. Consequently, the total postage cost to each SBS Entity associated with proposed temporary Rule 15Fb2–2T would be approximately $6, and the total postage costs associated with proposed temporary Rule 15Fb2–2T would be approximately $330.

The staff estimates that the costs associated with filing each of the forms would be minimal, but would be contingent on the length of the form. The Commission preliminarily believes that it would cost each SBS Entity approximately $1,180 to resubmit the Form SBSE.[165] As Forms SBSE–A and SBSE–BD are shorter than Form SBSE, the Commission preliminarily believes that it would cost each SBS Entity approximately $590 to resubmit the Form SBSE–A,[166] and $295 to resubmit the Form SBSE–BD.[167] Thus, the Commission estimates that the total cost to all SBS Entities to resubmit their Form SBSE, SBSE–A, or SBSE–BD, as applicable, would be approximately $33,630.[168]

C. Request for Comment

The Commission requests data to quantify and estimates of the costs and the value of the benefits of the proposed rules described above. The Commission specifically requests the following data or estimates with respect to the number

[160] $25,000 × 22 SBS Entities = $550,000.

[161] Commission staff conservatively estimates, based on staff experience, that the average time necessary for an SBS Entity to complete and file Schedule F would be approximately one hour. The staff believes that an SBS Entity would have a Compliance Manager complete and file Schedule F with its Form SBSE, Form SBSE–A, or form SBSE–BD, as appropriate, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Compliance Manager is approximately $295/hour. 1 hour × $295 = $295.

[162] $295 per nonresident SBS Entity × 22 nonresident SBS Entities = $6,490.

[163] Commission staff conservatively estimates, based on staff experience, that the average time necessary for an SBS Entity to assure that it is complying with the requirement to retain these pages would be approximately ten minutes. The staff believes that an SBS Entity would have a Compliance Manager to assure that it is complying with the requirement to retain these pages, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Compliance Manager is approximately $295/hour. 10 minutes × $295 = $49.17.

[164] $49.17 per SBS Entity × 55 SBS Entities = $2,704.17.

[165] Commission staff estimates, based on staff experience, that the average time necessary for an SBS Entity to file a Form SBSE would be approximately four hours. The staff believes that an SBS Entity would have a Compliance Manager file the firm's application on Form SBSE, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Compliance Manager is approximately $295/hour. 4 hours × $295 = $1,180.

[166] Commission staff estimates that filing Form SBSE–A would take approximately two hours. The staff believes that an SBS Entity would have a Compliance Manager file the form's application on Form SBSE–A, and that the pay scales for broker-dealers and SBS Entities would likely be similar. 2 hours × $295 = $590.

[167] Commission staff estimates that filing Form SBSE–BD would take approximately one hour. The staff believes that an SBS Entity would have a Compliance Manager complete and file the form's application on Form SBSE–BD. 1 hour × $295 = $295.

[168] ($590 × 35) + ($295 × 16) + ($1,180 × 4) = $30,090.

of persons that act as SBS Dealers and major security-based swap participants. The Commission specifically requests comment on the following:

Q–178. Are the estimates of the number of registrants that would be required to submit each form and the estimates of the costs associated with completing the forms and amendments are reasonable? If not, why not?

Q–179. Should the Commission require different and/or additional information to be provided on the proposed forms?

Q–180. Would additional benefits accrue if the Commission required different or additional information and, if so, what would these requirements entail?

Q–181. What other processes might an SBS Entity use to provide a basis for a senior officer's reasonable determination that the SBS Entity has the requisite capabilities that we may not have considered, and what would be the advantages, disadvantages, costs and benefits of those other processes?

Q–182. Are there additional costs or benefits related to registration information that the Commission should consider?

The Commission solicits comments on the costs and benefits related to the limited recordkeeping requirements of these proposed registration rules. The Commission specifically requests comment on the following:

Q–183. Should the Commission require different and/or additional information to be maintained by SBS Entities?

Q–184. Would additional benefits accrue if the Commission imposed different or additional recordkeeping requirements and, if so, what would these requirements entail?

Q–185. Are there additional costs or benefits related to recordkeeping that the Commission should consider?

We request comment on all aspects of the costs and benefits of the proposed rules and forms, particularly any effect our proposed rules may have on efficiency, competition, and capital formation. Commentators should provide analysis and empirical data to support their views on the costs and benefits associated with the proposed rule.

Q–186. What would be the competitive or anticompetitive effects of the proposed rules and forms on any market participants if the proposals are adopted as proposed?

Q–187. Would proposed Rules 15Fb1–1 through 15Fb6–1 and the proposed forms place a burden on competition?

Q–188. What may be the effect of the proposal on efficiency, competition, and capital formation?

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'') [169] the Commission must advise the Office of Management and Budget as to whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effect on competition, investment or innovation.

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review.

Q–189. What may be the potential impact of these proposed registration rules and forms for SBS Entities? Please include empirical data on (a) The potential annual effect of the proposed registration rules and forms on the economy; (b) any increase in costs or prices for consumers or individual industries associated with the proposed registration rules and forms; and (c) any potential effect the proposed registration rules and forms may have on competition, investment or innovation.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') [170] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) [171] of the Administrative Procedure Act,[172] 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.'' [173] 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.[174]

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (i) 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; [175] or (ii) 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,[176] 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.[177] Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (i) for entities in credit intermediation and related activities,[178] entities with $175 million or less in assets or, (ii) for non-depository credit intermediation and certain other activities,[179] $7 million or less in annual receipts; (iii) for entities in financial investments and related activities,[180] entities with $7 million or less in annual receipts; (iv) for insurance carriers and entities in related

[169] Public Law 104–121, Tit. II, 110 Stat. 857 (1996).

[170] 5 U.S.C. 601 *et seq.*

[171] 5 U.S.C. 603(a).

[172] 5 U.S.C. 551 *et seq.*

[173] 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 Control,* Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982).

[174] *See* 5 U.S.C. 605(b).

[175] *See* 17 CFR 240.0–10(a).

[176] *See* 17 CFR 240.17a–5(d).

[177] *See* 17 CFR 240.0–10(c).

[178] 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. Subsector 522.

[179] Including firms involved in secondary market financing, all other non-depository credit intermediation, mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation. Subsector 522.

[180] 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. Subsector 523.

activities,[181] entities with $7 million or less in annual receipts; and (v) for funds, trusts, and other financial vehicles,[182] entities with $7 million or less in annual receipts.[183]

Based on the Commission's existing information about the security-based swap market, the Commission preliminarily believes that the market, while broad in scope, is largely dominated by entities such as those that would be covered by the ''security-based swap dealer'' and ''major security-based swap market participant'' definitions. Subject to certain exceptions, Exchange Act Section 3(a)(71)(A) defines ''security-based swap dealer'' to mean any person who: (i) Holds itself out as a dealer in security-based swaps; (ii) makes a market in security-based swaps; (iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.[184] Exchange Act Section 3(a)(67)(A) defines ''major security-based swap participant'' to be as any person: (i) Who is not an SBS Dealer; and (ii)(I) 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; (II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or (III) that is a financial entity that (aa) 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; and (bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.[185]

Based on feedback from industry participants about the security-based swap markets, the Commission preliminarily believes that entities that will qualify as SBS Dealers and major security-based swap market participants, whether registered broker-dealers or not, exceed the thresholds defining ''small entities'' set out above. Thus, the Commission believes it is unlikely that the proposed SBS Entity registration rules and forms would have a significant economic impact any small entity.

For the foregoing reasons, the Commission certifies that the proposed SBS Entity registration rules and forms 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.

VIII. Statutory Basis and Text of Proposed Rules

The Commission is proposing Rule 15Fb1–1 through 15Fb6–1 pursuant to Sections 15F(a) through (d), 17(a), 23(a) and 30 of the Securities Exchange Act of 1934, as amended.

List of Subjects in 17 CFR Parts 240 and 249

Registration, Reporting and recordkeeping requirements, Securities, Security-based swaps, Security-based swap dealers, Security-based swap participants, Forms.

In accordance with the foregoing, the Securities and Exchange Commission is proposing to amend 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 as follows:

Authority: 12 U.S.C. 5221(e)(3); 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350; and Pub. L. 111–203, § 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

2. Add an undesignated center heading and §§ 240.15Fb1–1 through 240.15Fb6–1 to read as follows:

Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants

Sec.

240.15Fb1–1 Signatures.
240.15Fb2–1 Registration of security-based swap dealers and major security-based swap participants.
240.15Fb2–2T Temporary filing requirement.
240.15Fb2–3 Amendments to application for registration.
240.15Fb2–4 Nonresident security-based swap dealers and major security-based swap participants.
240.15Fb2–5 Registration of successor to registered security-based swap dealer or major security-based swap participant.
240.15Fb2–6 Registration of fiduciaries.
240.15Fb3–1 Duration of registration.
240.15Fb3–2 Withdrawal from registration.
240.15Fb3–3 Cancellation and revocation of registration.
240.15Fb6–1 Reports regarding associated persons.

* * * * *

§ 240.15Fb1–1 Signatures.

(a) Required signatures to, or within, any electronic submission (including, without limitation, signatories within the forms and certifications required by §§ 240.15Fb2–1, 240.15Fb2–4 and 240.15Fb6–1) must be in typed form rather than manual format. Signatures in an HTML, XML or XBRL document that are not required may, but are not required to, be presented in a graphic or image file within the electronic filing. When used in connection with an electronic filing, the term ''signature'' means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letters or series of letters of characters comprising a name, executed, adopted or authorized as a signature.

(b) Each signatory to an electronic filing (including, without limitation, each signatory to the forms and certifications required by §§ 240.15Fb2–1, 240.15Fb2–4 and 240.15Fb6–1) shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is

[181] 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. Subsector 524.

[182] 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. Subsector 525.

[183] *See* 13 CFR 121.201 (Jan. 1, 2010).

[184] *See supra* note 6.

[185] *See supra* note 7.

made. Upon request, the security-based swap dealer or major security-based swap participant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this paragraph (b).

(c) A person required to provide a signature on an electronic submission (including, without limitation, each signatory to the forms and certifications required by §§ 240.15Fb2–1, 240.15Fb2–4 and 240.15Fb6–1) may not have the form or certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

(d) Each manually signed signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing—

(1) On Schedules F and G to Form SBSE (§ 249.1600 of this chapter), SBSE–A (§ 249.1600a. of this chapter), or SBSE–BD (§ 249.1600b of this chapter), as appropriate, shall be retained by the filer until at least three years after the form or certification has been replaced or is no longer effective;

(2) On Form SBSE–C (§ 249.1600c of this chapter) shall be retained by the filer until at least three years after the Form was filed with the Commission.

§ 240.15Fb2–1 Registration of security-based swap dealers and major security-based swap participants.

(a) *Application.* An application for registration of a security-based swap dealer or a major security-based swap participant that is filed pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) shall be filed on Form SBSE (§ 249.1600 of this chapter) or Form SBSE–A (§ 249.1600a of this chapter) or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, in accordance with this section and the instructions to the forms.

(b) *Certification.*

(1) *Form of certification.* A knowledgeable senior officer shall certify on Form SBSE–C (§ 249.1600c of this chapter) that, after due inquiry, he or she has reasonably determined that the security-based swap dealer or major security-based swap participant has the operational, financial, and compliance capabilities to act as a security-based swap dealer or major security-based swap participant, as applicable, and has documented the process by which he or she reached such determination.

(2) *Timing of filing of certification.*

(i) *Conditional registration.*

(A) *Prior to the last compliance date.* Each security-based swap dealer or major security-based swap participant that files a completed application in accordance with paragraph (a) of this section before the last compliance date (as defined in paragraph (e) of this section) must file the certification described in paragraph (b)(1) of this section on or before such last compliance date.

(B) *Major security-based swap participants.* Each major security-based swap participant that files a completed application in accordance with paragraph (a) of this section after the last compliance date must file the certification described in paragraph (b)(1) of this section within four months after it files its completed application.

(ii) *Ongoing registration.* Each security-based swap dealer that files a completed application in accordance with paragraph (a) of this section after the last compliance date must file the certification described in paragraph (b)(1) of this section at the time it files its application.

(c) *Filing.*

(1) *Electronic filing.* Every application for registration and certification of a security-based swap dealer or major security-based swap participant and any additional registration documents shall be filed electronically with the Commission or its designee.

(2) *Effective date of filing.*

(i) *Application.* An application of a security-based swap dealer or a major security-based swap participant submitted pursuant to paragraph (a) of this section shall be considered filed when a complete Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, and all required additional documents are submitted electronically with the Commission or its designee;

(ii) *Certification.* A certification of a security-based swap dealer or a major security-based swap participant submitted pursuant to paragraph (b) of this section shall be considered filed when a complete Form SBSE–C (§ 249.1600c of this chapter) is submitted electronically with the Commission or its designee.

(d) *Commission decision.*

(1) *Conditional registration.* The Commission may deny or grant registration to a security-based swap dealer or major security-based swap participant on a conditional basis. The Commission will grant conditional registration if it finds that the security-based swap dealer's or major security-based swap participant's application is complete; *Except that,* the Commission may institute proceedings to determine whether conditional registration should be denied if the applicant is subject to a statutory disqualification (as defined in 15 U.S.C. 78c(a)(39)) or if the Commission is aware of inaccurate statements in the application. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing. At the conclusion of such proceedings, the Commission shall grant or deny such registration.

(2) *Ongoing registration.* The Commission may grant or deny ongoing registration based on a security-based swap dealer's or major security-based swap participant's application (filed pursuant to paragraph (a) of this section) and certification (filed pursuant to paragraph (b) of this section). A conditionally registered security-based swap dealer or major security-based swap participant need not submit a new application to apply for ongoing registration, but must amend its application, as required pursuant to § 240.15Fb2–3. The Commission will grant ongoing registration if it finds that the requirements of Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) are satisfied; *Except that,* the Commission may institute proceedings to determine whether ongoing registration should be denied if it does not make such finding or if the applicant is subject to a statutory disqualification (as defined in 15 U.S.C. 78c(a)(39)) or the Commission is aware of inaccurate statements in the application or certification. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing. At the conclusion of such proceedings, the Commission shall grant or deny such registration.

(e) *Definition.* For purposes of this section, the term *last compliance date* shall mean the latest date, designated by the Commission, by which security-based swap dealers and major security-based swap participant must comply with any of the initial rules promulgated under Section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10).

§ 240.15Fb2–2T Temporary filing requirement.

(a) *Paper filing.* If a technological means to facilitate receipt and retention of applications required to be filed in accordance with § 240.15Fb2–1 is not functional on or before [*date to be determined*], each applicant for registration as a security-based swap dealer or major security-based swap participant must, notwithstanding § 240.15Fb2–1(c)(1), file its application on Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of

this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as applicable, any additional documents, and Form SBSE–C (§ 249.1600c of this chapter) in paper form by sending it to the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

(b) *Transitional resubmission requirement.* Each applicant must resubmit its Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), and Form SBSE–BD (§ 249.1600b of this chapter), as applicable, any additional documents, and Form SBSE–C (§ 249.1600c of this chapter) to the Commission electronically within three months of the date such technological means to facilitate receipt and retention of applications becomes functional.

§ 240.15Fb2–3 Amendments to application for registration.

If a security-based swap dealer or a major security-based swap participant finds that the information contained in its application for registration (as described in § 240.15Fb2–1(a)), or in any amendment thereto, is or has become inaccurate for any reason, the security-based swap dealer or a major security-based swap participant shall promptly file an amendment electronically with the Commission/its designee on Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, to correct such information.

§ 240.15Fb2–4 Nonresident security-based swap dealers and major security-based swap participants.

(a) *Definition.* For purposes of this section, the terms *nonresident security-based swap dealer* and *nonresident major security-based swap participant* shall mean:

(1) In the case of an individual, one who resides, or has his or her principal place of business, in any place not in the United States;

(2) In the case of a corporation, one incorporated in or having its principal place of business in any place not in the United States; or

(3) In the case of a partnership or other unincorporated organization or association, one having its principal place of business outside the United States.

(b) *Power of attorney.*

(1) Each nonresident security-based swap dealer and nonresident major security-based swap participant registered or applying for registration pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) shall obtain a written irrevocable consent and power of attorney appointing an agent in the United States, other than the Commission or a Commission member, official or employee, upon whom may be served any process, pleadings, or other papers in any action brought against the nonresident security-based swap dealer or nonresident major security-based swap participant to enforce the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). This consent and power of attorney must be signed by the nonresident security-based swap dealer or nonresident major security-based swap participant and the named agent(s) for service of process.

(2) Each nonresident security-based swap dealer and nonresident major security-based swap participant registered or applying for registration pursuant to section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) shall, at the time of filing its application on Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, furnish to the Commission the name and address of its United States agent for service of process on Schedule F to the appropriate form.

(3) Any change of a nonresident security-based swap dealer's and nonresident major security-based swap participant's agent for service of process and any change of name or address of a nonresident security-based swap dealer's and nonresident major security-based swap participant's existing agent for service of process shall be communicated promptly to the Commission through amendment of the Schedule F of Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate.

(4) Each nonresident security-based swap dealer and nonresident major security-based swap participant must promptly appoint a successor agent for service of process if the nonresident security-based swap dealer and nonresident major security-based swap participant discharges its identified agent for service of process or if its agent for service of process is unwilling or unable to accept service on behalf of the nonresident security-based swap dealer or nonresident major security-based swap participant.

(5) Each nonresident security-based swap dealer and nonresident major security-based swap participant must maintain, as part of its books and records, the agreement identified in paragraph (b)(1) of this section for at least three years after the agreement is terminated.

(c) *Access to books and records.*

(1) *Certification and opinion of counsel.* Any nonresident security-based swap dealer and nonresident major security-based swap participant applying for registration pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b) shall certify on Schedule F of Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, and provide an opinion of counsel that the nonresident security-based swap dealer and nonresident major security-based swap participant can, as a matter of law, provide the Commission with prompt access to the books and records of such nonresident security-based swap dealer and nonresident major security-based swap participant, and can, as a matter of law, submit to onsite inspection and examination by the Commission.

(2) *Amendments.* The nonresident security-based swap dealer and nonresident major security-based swap participant shall re-certify, on Schedule F to Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as applicable, within 90 days after any changes in the legal or regulatory framework that would impact the nonresident security-based swap dealer's or nonresident major security-based swap participant's ability to, or the manner in which it provides the Commission with prompt access to its books and records, or impacts the Commission's ability to inspect and examine the nonresident security-based swap dealer or nonresident major security-based swap participant. The re-certification shall be accompanied by a revised opinion of counsel describing how, as a matter of law, the nonresident security-based swap dealer or nonresident major security-based swap participant will continue to meet its obligations to provide the Commission with prompt access to its books and records and to be subject to Commission inspection and examination under the new regulatory regime.

§ 240.15Fb2–5 Registration of successor to registered security-based swap dealer or a major security-based swap participant.

(a) In the event that a security-based swap dealer or major security-based swap participant succeeds to and continues the business of a security-

based swap dealer or major security-based swap participant registered pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)), the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration in accordance with § 240.15Fb2–1, and the predecessor files a notice of withdrawal from registration on Form SBSE–W (§ 249.1601 of this chapter).

(b) Notwithstanding paragraph (a) of this section, if a security-based swap dealer or major security-based swap participant succeeds to and continues the business of a registered predecessor security-based swap dealer or major security-based swap participant, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor security-based swap dealer or major security-based swap participant on Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

§ 240.15Fb2–6 Registration of fiduciaries.

The registration of a security-based swap dealer or a major security-based swap participant shall be deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such registered security-based swap dealer or a major security-based swap participant; Provided, that such fiduciary files with the Commission, within 30 days after entering upon the performance of his or her duties, an amended Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, indicating the fiduciary's position with respect to management of the firm and, as an additional document, a copy of the order, judgment, decree, or other document appointing the fiduciary.

§ 240.15Fb3–1 Duration of registration.

(a) *General.* A person registered as a security-based swap dealer or major security-based swap participant in accordance with § 240.15Fb2–1 will continue to be so registered until the effective date of any cancellation, revocation or withdrawal of such registration or any other event the Commission determines should trigger expiration.

(b) *Conditional registration.* Notwithstanding paragraph (a) of this section, conditional registration granted by the Commission in accordance with § 240.15Fb2–1(d)(1) shall expire:

(1) *During the transitional period*—on the last compliance date (as that term is defined in § 240.15Fb2–1(e)) for security-based swap dealers and major security-based swap participants that filed a completed application before the last compliance date, unless the security-based swap dealer or major security-based swap participant files with the Commission a certification in accordance with § 240.15Fb2–1(b)(1)(i), in which case conditional registration shall extend an additional thirty days;

(2) *Major security-based swap participants*—four months after the major security-based swap participant files its completed application, unless the major security-based swap participant files with the Commission a certification in accordance with § 240.15Fb2–1(b)(1)(ii); in which case the conditional registration shall extend an additional thirty days.

(c) *Extensions.* The Commission may extend conditional registration for good cause.

§ 240.15Fb3–2 Withdrawal from registration.

(a) Notice of withdrawal from registration as a security-based swap dealer or major security-based swap participant pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) shall be filed on Form SBSE–W (§ 249.1601 of this chapter) in accordance with the instructions contained therein. Every notice of withdrawal from registration as a security-based swap dealer or major security-based swap participant shall be filed electronically with the Commission or its designee in accordance with applicable filing requirements. Prior to filing a notice of withdrawal from registration on Form SBSE–W, a security-based swap dealer or major security-based swap participant shall amend its Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter) or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, in accordance with § 240.15Fb2–3(a) to update any inaccurate information.

(b) A notice of withdrawal from registration filed by a security-based swap dealer or major security-based swap participant pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) shall become effective for all matters (except as provided in this paragraph (b)) on the 60th day after the filing thereof with the Commission or its designee, within such longer period of time as to which such security-based swap dealer or major security-based swap participant consents or which the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine. If a notice of withdrawal from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of, such security-based swap dealer or major security-based swap participant, or if prior to the effective date of the notice of withdrawal pursuant to this paragraph (b), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (b) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

§ 240.15Fb3–3 Cancellation and revocation of registration.

(a) *Cancellation.* If the Commission finds that any person registered pursuant to § 240.15Fb2–1 is no longer in existence or has ceased to do business as a security-based swap dealer or major security-based swap participant, the Commission shall by order cancel the registration of such person.

(b) *Revocation.* The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission if it makes a finding as specified in Section 15F(l)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(l)(2)).

§ 240.15Fb6–1 Reports regarding associated persons.

(a) *Certification.* No registered security-based swap dealer or major security-based swap participant shall act as a security-based swap dealer or major security-based swap participant unless it has certified electronically on Schedule G of Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, that no person associated with such security-based swap dealer or major security-based swap participant who is effecting or involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant is subject to statutory disqualification, as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)).

(b) To support the certification required by paragraph (a) of this section, each registered security-based swap dealer and registered major security-based swap participant shall obtain a questionnaire or application for employment executed by each of its associated persons who effects or is involved in effecting security based swaps on behalf of the security-based swap dealer or major security-based swap participant which questionnaire or application shall serve as a basis for a background check of the associated person and be reviewed and signed by the security-based swap dealer's or major security-based swap participant's Chief Compliance Officer (designated as required by Section 15F(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(k)) or his or her designee and shall contain at least the following information with respect to the associated person:

(1) 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 and major security-based swap participant;

(2) The associated person's date of birth;

(3) 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;

(4) 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, by any national securities exchange or national securities association, or by any foreign financial regulatory authority including any finding that the associated person either aided or abetted or was a cause of any disciplinary action or had violated any law;

(5) 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 when such action was taken;

(6) 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;

(7) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities (including security-based swaps), futures or commodities (including swaps), banking, insurance or real estate (including, but not limited to, acting or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing; and

(8) A record of any other name or names by which the associated person has been known or which the associated person has used.

(c) Each registered security-based swap dealer and registered major security-based swap participant shall maintain all questionnaires and applications for employment obtained pursuant to paragraph (b) of this section as part of its books and records for at least three years after the associated person has terminated his or her association with the registered security-based swap dealer or registered major security-based swap participant.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. 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.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Add subpart Q to read as follows:

Subpart Q—Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants

Sec.

249.1600 Form SBSE, for application for registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration.
249.1600a Form SBSE–A, for application for registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration by firms registered or registering with the Commodity Futures Trading Commission as a swap dealer or major swap participant that are not also registered or registering with the Commission as a broker or dealer.
249.1600b Form SBSE–BD, for application for registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration by firms registered or registering with the Commission as a broker or dealer.
249.1600c Form SBSE–C, for certification by security-based swap dealers and major security-based swap participants.
249.1601 Form SBSE–W, for withdrawal from registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration.

§ 249.1600 Form SBSE, for application for registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration.

This form shall be used for application for registration as a security-based swap dealer or major security-based swap participant by firms that are not registered with the Commission as a broker or dealer and that are not registered or registering with the Commodity Futures Trading Commission as a swap dealer or major swap participant, pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) and to amend such an application for registration.

§ 249.1600a Form SBSE–A, for application for registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration by firms registered or registering with the Commodity Futures Trading Commission as a swap dealer or major swap participant that are not also registered or registering with the Commission as a broker or dealer.

This form shall be used instead of Form SBSE (§ 249.1600) to apply for registration as a security-based swap dealer or major security-based swap participant by firms that are not registered or registering with the Commission as a broker or dealer but that are registered or registering with the Commodity Futures Trading Commission as a swap dealer or major swap participant, pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) and to amend such an application for

registration. An entity that is registered or registering with the Commission as a broker or dealer and is also registered or registering with the Commodity Futures Trading Commission as a swap dealer or major swap participant shall apply for registration as a security-based swap dealer or major security-based swap participant on Form SBSE–BD (§ 249.1600b) and not on this Form SBSE–A.

§ 249.1600b Form SBSE–BD, for application for registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration by firms registered or registering with the Commission as a broker or dealer.

This form shall be used instead of either Form SBSE (§ 249.1600) or SBSE–A (§ 249.1600a) to apply for registration as a security-based swap dealer or major security-based swap participant solely by firms registered or registering with the Commission as a broker or dealer, pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) and to amend such an application for registration. An entity that is registered or registering with the Commission as a broker or dealer and is also registered or registering with the Commodity Futures Trading Commission as a swap dealer or major swap participant, the entity shall apply for registration as a security-based swap dealer or major security-based swap participant on this Form SBSE–BD and not on Form SBSE–A.

§ 249.1600c Form SBSE–C, for certification by security-based swap dealers and major security-based swap participants.

This form shall be used to file the certification required pursuant to § 240.15Fb2–1(b) of this chapter.

§ 249.1601 Form SBSE–W, for withdrawal from registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration.

This form shall be used to withdraw from registration as a security-based swap dealer or major security-based swap participant, pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)).

By the Commission.

Dated: October 12, 2011.

Elizabeth M. Murphy,

Secretary.

Note: The following Forms will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

Form SBSE

OMB Approval
OMB Number: .....3235-____ Expires:..... ..Month __, 2014 Estimated average burden hours per response: . . . . . _____. per amendment: . . . . . _____.

Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants

FORM SBSE INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. **FORM** - Form SBSE is the Application for Registration as either a Security-based Swap Dealer or Major Security-based Swap Participant (collectively, "SBS Entities"). SBS Entities that are not registered with the Commission as broker-dealers nor registered or registering with the Commodity Futures Trading Commission ("CFTC") as a swap dealer or major swap participant must file this form to register with the Securities and Exchange Commission. An applicant must also file Schedules A, B, D, E, F, and G as appropriate. There is no Schedule C.
2. **ELECTRONIC FILING** – The applicant must file Form SBSE through the EDGAR system, and must utilize the EDGAR Filer Manual (as defined in 17 CFR 232. 11) to file and amend Form SBSE electronically to assure the timely acceptance and processing of those filings.[186]
3. **UPDATING** - By law, the *applicant* must promptly update Form SBSE information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason [17 CFR 240.15Fb2-2]. In addition, the *applicant* must update any incomplete or inaccurate information contained on Form SBSE prior to filing a notice of withdrawal from registration on Form SBSE-W [17 CFR 15Fb3-2(a)].
4. **CONTACT EMPLOYEE** - The individual listed as the contact employee must be authorized to receive all compliance information, communications, and mailings, and be responsible for disseminating it within the *applicant's* organization.
5. **FEDERAL INFORMATION LAW AND REQUIREMENTS -** 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 control number. Sections 15F, 17(a) and 23(a) of the Exchange Act authorize the SEC to collect the information on this form from registrants. See 15 U.S.C. §§78o-10, 78q and 78w. Filing of this form is mandatory; however, the social security number information, which aids in identifying the applicant, is voluntary. The principal purpose of this Form is to permit the Commission to determine whether the *applicant* meets the statutory requirements to engage in the security-based swap business. The Commission maintain[s] a file of the information on this form and will make certain information collected via the form publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

B. FILING INSTRUCTIONS

1. **FORMAT**
   a. Sections 1-14 must be answered and all fields requiring a response must be completed before the filing will be accepted.
   b. *Applicant* must complete the execution screen certifying that Form SBSE and amendments thereto have been executed properly and that the information contained therein is accurate and complete.
   c. To amend information, the *applicant* must update the appropriate Form SBSE screens.
   d. A paper copy, with original signatures, of the initial Form SBSE filing and amendments to Disclosure Reporting Pages (DRPs) must be retained by the *applicant* and be made available for inspection upon a regulatory request.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning the *applicant* or *control affiliate* that relates to the occurrence of an event reportable under Item 12 must be provided on the *applicant's* appropriate DRP.
3. **DIRECT AND INDIRECT OWNERS** - Amend the Direct Owners and Executive Officers screen and the Indirect Owners screen when changes in ownership occur.

The mailing address for questions and correspondence is:

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186 As discussed in the release proposing this Form, the Commission is currently developing a system to facilitate receipt of applications electronically. More specific instructions on how to file this Form may be included in the final version of the Form.

EXPLANATION OF TERMS
(The following terms are italicized throughout this form.)

1. GENERAL

APPLICANT - The security-based swap dealer or major security-based swap participant applying on or amending this form.

CONTROL - The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any *person* that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to *control* that company.

STATE – Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, any other territory of the United States, or any subdivision or regulatory body thereof.

PERSON - An individual, partnership, corporation, trust, or other organization.

SELF-REGULATORY ORGANIZATION (SRO) - Any national securities or futures exchange, registered securities or futures association, registered clearing agency, or derivatives clearing organization.

SUCCESSOR – The term "successor" is defined to be an unregistered entity that assumes or acquires substantially all of the assets and liabilities, and that continues the business of, a predecessor security-based swap dealer or major security-based swap participant that ceases its security-based swap activities. [See Exchange Act Rule 15Fb2-5 (17 CFR 240.15Fb2-5]

2. FOR THE PURPOSE OF ITEM 12 AND THE CORRESPONDING DISCLOSURE REPORTING PAGES (DRPs)

CHARGED - Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).

CONTROL AFFILIATE – A person named in Items 10 or 11 as a control person or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by, the *applicant*, including any current employee of the applicant except one performing only clerical, administrative, support or similar functions, or who, regardless of title, performs no executive duties or has no senior policy making authority.

ENJOINED – Includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining order.

FELONY – For jurisdictions that do not differentiate between a *felony* and a *misdemeanor,* a *felony* is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. The term also includes a general court martial.

FOUND – Includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

INVESTMENT OR INVESTMENT-RELATED – Pertaining to securities, commodities, banking, savings association activities, credit union activities, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, security-based swap dealer, major security-based swap participant, savings association, credit union, insurance company, or insurance agency).

INVOLVED – Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

MINOR RULE VIOLATION – A violation of a *self-regulatory organization* rule that has been designated as "minor" pursuant to a plan approved by the SEC or CFTC. A rule violation may be designated as "minor" under a plan if the

sanction imposed consists of a fine of $2,500 or less, and if the sanctioned person does not contest the fine. (Check with the appropriate *self-regulatory organization* to determine if a particular rule violation has been designated as "minor" for these purposes).

MISDEMEANOR – For jurisdictions that do not differentiate between a *felony* and a *misdemeanor*, a *misdemeanor* is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. The term also includes a special court martial.

ORDER – A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an *order*.

PROCEEDING – Includes a formal administrative or civil action initiated by a governmental agency, *self-regulatory organization* or a *foreign financial regulatory authority*; a *felony* criminal indictment or information (or equivalent formal charge); or a *misdemeanor* criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

FORM SBSE Page 1 (Execution Page)	Uniform Application for Security-based Swap Dealer and Major Security-based Swap Participant Registration Date:_____ SEC Filer No: _____	Official Use	Official Use Only

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as an SBS Entity, would violate the Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

[ ] APPLICATION [ ] AMENDMENT

1. Exact name, principal business address, mailing address, if different, and telephone number of the *applicant:*

A. Full name of the *applicant*:

B. Tax Identification No.: Applicant's CIK # (if any):

C. (1) The *business name* under which the *applicant* primarily conducts business, if different from 1A.

(2) List on Schedule D, Page 1, Section I any other name by which the *applicant* conducts business and where it is used.

D. If this filing makes a name change on behalf of an *applicant,* enter the new name and specify whether the change is to the [ ] *applicant's name* (1A) or [ ] business name (1C):

Please check above.

E. *Applicant's* Main Address: (Do not use a P.O. Box)

Number and Street 1: Number and Street 2:

City: State: Country: Zip/Postal Code:

Other business locations must be reported on Schedule E. Security-based swap dealers and major security-based swap participants that do not reside in the United States of America shall designate a U.S. agent for service of process on Schedule F.

F. Mailing Address, if different:

Number and Street 1: Number and Street 2:

City: State: Country: Zip/Postal Code:

G. Business Telephone Number:

H Website/URL:

I. Contact Employee:

Name: Title:

Telephone Number: Email Address:

J. Chief Compliance Officer designated by the *applicant* in accordance with Exchange Act Section 15F(k):

Name: Title:

Telephone Number: Email Address:

EXECUTION:

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission in connection with the applicant's security-based swap activities, unless the applicant is a nonresident SBS Entity , may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Items 1E and 1F. If the applicant is a nonresident SBS Entity, it must complete Schedule F to designate a U.S. agent for service of process.

The undersigned certifies that he/she has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including schedules attached hereto, and other information filed herewith are current, true and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

Date (MM/DD/YYYY) Name of Applicant

By:

Signature Name and Title of Person Signing on *Applicant's* behalf

This page must always be completed in full.

DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY

FORM SBSE Page 2	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	Official Use	Official Use Only

2.	A.	The applicant is registering as a security-based swap dealer: [ ] Yes [ ] No	
	B.	The applicant is registering as a major security-based swap participant: [ ] Yes [ ] No Because it: (check all that apply) [ ] maintains a substantial security-based swap position [ ] has substantial counterparty exposure [ ] is highly leveraged relative to its capital position	
3.		Does the applicant intend to compute capital or margin, or price customer or proprietary positions, using mathematical models? [ ] Yes [ ] No	
4.		Is the *applicant* subject to regulation by a prudential regulator, as defined in Section 1a(39) of the Commodity Exchange Act. [ ] Yes [ ] No If "*yes*," identify the prudential regulator: _____.	
5.		Briefly describe the *applicant's* business: _____	
6.	A.	Indicate legal status of the *applicant*: [ ] Corporation [ ] Limited Liability Company [ ] Other (specify) [ ] Partnership [ ]	
	B.	Month *applicant's* fiscal year ends: [ ]	
	C.	Indicate date and place *applicant* obtained its legal status (i.e., state or country where incorporated, where partnership agreement was filed, or where *applicant* entity was formed): State of formation: [ ] Country of formation: [ ] Date of formation: MM/DD/YYYY [ ] *Schedule A and, if applicable, Schedule B must be completed as part of all initial applications.*	
7.		Is the *applicant* at the time of this filing *succeeding* to the business of a currently registered SBS Entity? *If "Yes," complete appropriate items on Schedule D, Page 1, Section III.*	YES [ ] NO [ ]
8.		Does the *applicant* hold or maintain any funds or securities to collateralize counterparty transactions?	[ ] [ ]
9.		Does the *applicant* have any arrangement:	
	A.	With any other *person*, firm, or organization under which any books or records of the *applicant* are kept, maintained, or audited by such other *person*, firm or organization?	[ ] [ ]
	B.	Under which any other person, firm or organization executes, trades, custodies, clears or settles on behalf of the applicant (including any *SRO* or swap execution facility in which the applicant is a member)? *If "Yes" to any part of Item 9, complete appropriate items on Schedule D, Page 1, Section IV.*	[ ] [ ]
10.		Does any *person* directly or indirectly:	
	A.	*Control* the management or policies of the *applicant* through agreement or otherwise?	[ ] [ ]
	B.	Wholly or partially finance the business of the *applicant*? *Do not answer "Yes" to 9B if the person finances the business of the applicant through: 1) a public offering of securities made pursuant to the Securities Act of 1933; or 2) credit extended in the ordinary course of business by suppliers, banks, and others.* *If "Yes" to any part of Item 10, complete appropriate items on Schedule D, Page 1, Section IV.*	[ ] [ ]
11.	A.	Directly or indirectly, does the *applicant control*, is the *applicant controlled* by, or is the *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business? *If "Yes" to item 11A, complete appropriate items on Schedule D, Page 2, Section V.*	[ ] [ ]
	B.	Directly or indirectly, is applicant controlled by any bank holding company or does applicant control, is applicant controlled by, or is applicant under common control with any bank (as defined in 15 U.S.C. 78c(a)(6)) or any foreign bank? *If "Yes" to item 11B, complete appropriate items on Schedule D, Page 3, Section VI.*	[ ] [ ]

FORM SBSE Page 3	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**	Official Use Only

	12. Use the appropriate DRP for providing details to "yes" answers to the questions in Item 12. Refer to the Explanation of Terms section of Form SBSE Instructions for explanations of italicized terms.		
CRIMINAL DISCLOSURE	A. In the past ten years has the *applicant* or a *control affiliate*:		
	(1) Been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *felony*?	YES [ ] NO [ ]	
	(2) Been charged with a *felony*	[ ] [ ]	
	B. In the past ten years has the *applicant* or a *control affiliate*:		
	(1) Been convicted of or pled guilty or or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving*: investments or an *investment-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	[ ] [ ]	
	(2) Been *charged* with a *misdemeanor* specified in 12B(1)?	[ ] [ ]	
REGULATORY ACTION DISCLOSURE	C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
	(1) *Found* the *applicant* or a *control affiliate* to have made a false statement or omission?	[ ] [ ]	
	(2) *Found* the *applicant* or a *control affiliate* to have been involved in a violation of its regulations or statutes?	[ ] [ ]	
	(3) *Found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, revoked, or restricted?	[ ] [ ]	
	(4) Entered an *order* against the *applicant* or a *control affiliate* in connection with *investment-related* activity?	[ ] [ ]	
	(5) Imposed a civil money penalty on the *applicant* or a *control affiliate*, or ordered the *applicant* or a *control affiliate* to cease and desist from any activity?	[ ] [ ]	
	D. Has any other federal regulatory agency, state regulatory agency, or *foreign financial regulatory authority*:		
	(1) Ever found the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?	[ ] [ ]	
	(2) Ever found the *applicant* or a *control affiliate* to have been involved in a violation of *investment-related* regulations or statutes?	[ ] [ ]	
	(3) Ever found the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked or restricted?	[ ] [ ]	
	(4) In the past ten years, entered an order against the *applicant* or a *control affiliate* in connection with an *investment-related* activity?	[ ] [ ]	
	(5) Ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by order, prevented it from associating with an *investment-related* business or restricted its activities?	[ ] [ ]	
	E. Has any *self-regulatory organization*:		
	(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	[ ] [ ]	
	(2) *found* the *applicant* or a *control affiliate* to have been involved in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and exchange Commission)?	[ ] [ ]	
	(3) *found* the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked or restricted?	[ ] [ ]	
	(4) Disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?	[ ] [ ]	
	F. Has the *applicant's* or a *control affiliate's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?	[ ] [ ]	
	G. Is the *applicant* or a *control affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of 12C, D, or E?	[ ] [ ]	

FORM SBSE Page 4	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	Official Use	Official Use Only

			YES	NO
CIVIL JUDICIAL DISCLOSURE	H.	(1) Has any domestic or foreign civil judicial court:		
		(a) In the past ten years, enjoined the *applicant* or a *control affiliate* in connection with any investment-related activity?	[ ]	[ ]
		(b) Ever *found* that the *applicant* or a *control affiliate* was involved in a violation of *investment-related* statutes or regulations?	[ ]	[ ]
		(c) Ever dismissed, pursuant to a settlement agreement, an *investment-related* civil judicial action brought against the *applicant* or *control affiliate* by a state or f*oreign financial regulatory authority*?	[ ]	[ ]
		(2) Is the *applicant* or a *control affiliate* now the subject of any civil judicial *proceeding* that could result in a "yes" answer to any part of 12H(1)?	[ ]	[ ]
FINANCIAL DISCLOSURE	I.	In the past ten years has the *applicant* or a *control affiliate* ever been a securities firm or a futures firm, or a control affiliate of a securities firm or a futures firm that:		
		(1) Has been the subject of a bankruptcy petition?	[ ]	[ ]
		(2) Has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?	[ ]	[ ]
13.		Is the *applicant* registered with the Commission as an investment adviser or municipal securities advisor or with the CFTC as a commodity trading adviser? If "yes," provide all unique identification numbers assigned to the firm relating to this business on Schedule D, Page 1, Section II.	[ ]	[ ]
14.	A.	Does *applicant* effect transactions in commodity futures, commodities or commodity options as a broker for others or as a dealer for its own account? If "yes," provide all unique identification numbers assigned to the firm relating to this business on Schedule D, Page 1, Section II.	[ ]	[ ]
	B.	Does *applicant* engage in any other investment-related, non-securities business? If "yes," provide all unique identification numbers assigned to the firm relating to this business and describe each other business briefly on Schedule D, Page 1, Section II.	[ ]	[ ]

Schedule A of FORM SBSE **DIRECT OWNERS AND EXECUTIVE OFFICERS** (Answer for Form SBSE Item 3)	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**

1. Use Schedule A to provide information on the **direct** owners and executive officers of the applicant. Use Schedule B to provide information on **indirect** owners. **Complete each column.**

2. List below the names of:

   (a) Each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individuals with similar status or function;

   (b) In the case of an *applicant* that is a corporation, each shareholder that directly owns 5% or more of a class of a voting security of the *applicant*, unless the *applicant* is a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934).

   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the *applicant*. For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence, or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

   (c) In the case of an *applicant* that is a partnership, **all** general partners, and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital; and

   (d) In the case of a trust that directly owns 5% or more of a class of a voting security of the *applicant*, or that has the right to receive upon dissolution, or has contributed, 5% or more of the *applicant*'s capital, the trust and each trustee.

   (e) In the case of an *applicant* that is a Limited Liability Company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Are there any indirect owners of the applicant required to be reported on Schedule B? [ ] Yes [ ] No

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.

5. Complete the "Title or Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

6. Ownership Codes are:

   NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
   A - 5% but less than 10% C - 25% but less than 50% E - 75% or more

7. (a) In the "Control Person" column, enter "Yes" if *person* has *control* as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".

   (b) In the "PR " column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired		Ownership Code	Control Person		CRD and/or IARD No. If None, IRS Tax No.	Official Use Only
			MM	YYYY			PR		
	For individuals not presently registered through CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
	For individuals not presently registered through CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
	For individuals not presently registered through CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service)								
	For individuals not presently registered through CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								

Schedule B of FORM SBSE **INDIRECT OWNERS** (Answer for Form SBSE Item 3)	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**

1. Use Schedule B to provide information on the **indirect** owners of the *applicant*. Use Schedule A to provide information on **direct** owners. **Complete each column.**

2. With respect to each owner listed on Schedule A, (except individual owners), list below:

   (a) In the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation.
   For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence, or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

   (b) In the case of an owner that is a partnership, **all** general partners, and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital; and

   (c) In the case of an owner that is a trust, the trust and each trustee.

   (d) In the case of an owner that is a Limited Liability Company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934) is reached, no ownership information further up the chain of ownership need be given.

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.

5. Complete the "Status" column by status as partner, trustee, shareholder, etc., and if shareholder, class of securities owned (if more than one is issued).

6. Ownership Codes are:
   C - 25% but less than 50% D - 50% but less than 75% E - 75% or more F - Other General Partners

7. (a) In the "Control Person" column, enter "Yes" if *person* has *control* as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".

   (b) In the "PR " column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired		Ownership Code	Control Person		CRD and/or IARD No. If None, IRS Tax No.	Official Use Only
				MM	YYYY			PR		

Schedule D of FORM SBSE Page 1	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**	Official Use Only

Use Schedule D Page 1 to report details for items listed below.
This is an [ ] INITIAL [ ] AMENDED detail filing for the Form SBSE items checked below:

Section I *Other Business Names*

(Check if applicable) [ ] Item 1C(2)
List each of the "other" names and the *state(s) or country(ies)* in which they are used.

1. Name	State/Country	2. Name	State/Country
3. Name	State/Country	4. Name	State/Country

Section II *Other Business*

(Check if applicable) [ ] Item 13 [ ] Item 14A [ ] Item 14B
Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section.

Unique Identification Number(s):	*Assigning Regulator(s)/Entity(s):*

Briefly describe any other investment-related, non-securities business. Use reverse side of this sheet for additional comments if necessary.

Section III *Successions*

(Check if applicable) [ ] Item 7

Date of Succession MM DD YYYY / /	*Name of Predecessor*
IRS Employer Number (if any)	SEC File Number (if any)

Briefly describe details of the succession including any assets or liabilities not assumed by the successor. Use reverse side of this sheet for additional comments if necessary.

Section IV *Record Maintenance Arrangements / Business Arrangements / Control Persons / Financings*

(Check one) [ ] Item 9A [ ] Item 9B [ ] Item 10A [ ] Item 10B
Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section including any multiple responses to any item. Complete the "Effective Date" box with the Month, Day and Year that the arrangement or agreement became effective. When reporting a change or termination of an arrangement, enter the effective date of the change.

Firm or Organization Name	SEC File, CRD, NFA, IARD, and/or CIK Number (if any)	
Business Address *(Street, City, State/Country, Zip + 4 Postal Code)*	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /
Individual Name	CRD, NFA, and/or IARD Number (if any)	
Business Address (if applicable) *(Street, City, State/Country, Zip + 4 Postal Code)*	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /

Briefly describe the nature of the arrangement with respect to books or records (ITEM 9A); the nature of the execution, trading, custody, clearing or settlement arrangement (ITEM 9B);the nature of the control or agreement (ITEM 10A); or the method and amount of financing (ITEM 10B). Use reverse side of this sheet for additional comments if necessary.

For ITEM 10A ONLY - If the control person is an individual not presently registered through CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service).

Schedule D of FORM SBSE Page 2	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**	Official Use Only

Use this Schedule D Page 2 to report details for Item 11A. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 2 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an [ ] INITIAL [ ] AMENDED detail filing for Form SBSE Item 11A

[ ] 11A. Directly or indirectly, does *applicant control*, is *applicant controlled* by, or is *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?

Section V ***Complete this section for control issues relating to ITEM 11A only.***

The details supplied relate to:

1.	Partnership, Corporation, or Organization Name	CRD Number (if any)

(*check only one*)

This Partnership, Corporation, or Organization [ ] *controls applicant* [ ] is *controlled* by *applicant* [ ] is under common *control* with *applicant*

Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /

Is Partnership, Corporation or Organization a foreign entity" [ ] Yes [ ] No	If Yes, provide country of domicile or incorporation"	Check "Yes" or "No" for activities of this partnership Corporation, or organization: ▶ Securities [ ] Yes [ ] No Activities:	Investment Advisory [ ] Yes [ ] No Activities:

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

2.	Partnership, Corporation, or Organization Name	CRD Number (if any)

(*check only one*)

This Partnership, Corporation, or Organization [ ] *controls applicant* [ ] is *controlled* by *applicant* [ ] is under common *control* with *applicant*

Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /

Is Partnership, Corporation or Organization a foreign entity" [ ] Yes [ ] No	If Yes, provide country of domicile or incorporation"	Check "Yes" or "No" for activities of this partnership Corporation, or organization: ▶ Securities [ ] Yes [ ] No Activities:	Investment Advisory [ ] Yes [ ] No Activities:

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

3.	Partnership, Corporation, or Organization Name	CRD Number (if any)

(*check only one*)

This Partnership, Corporation, or Organization [ ] *controls applicant* [ ] is *controlled* by *applicant* [ ] is under common *control* with *applicant*

Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /

Is Partnership, Corporation or Organization a foreign entity" [ ] Yes [ ] No	If Yes, provide country of domicile or incorporation"	Check "Yes" or "No" for activities of this partnership Corporation, or organization: ▶ Securities [ ] Yes [ ] No Activities:	Investment Advisory [ ] Yes [ ] No Activities:

Briefly describe the control relationship. Use reverse side of this sheet for additional comments if necessary.

If applicant has more than 3 organizations to report, complete additional schedule D Page 2s.

Schedule D of FORM SBSE Page 3	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**	Official Use Only

Use Schedule D Page 3 to report details for Item 11B. Report only new information or changes/updates to previously submitted details. Do not report previously submitted information. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 3 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an [ ] INITIAL [ ] AMENDED detail filing for Form SBSE Item 11B

[ ] 11B. Directly or indirectly, is applicant controlled by any bank holding company or does applicant control, is applicant controlled by, or is applicant under common control with any bank (as defined in 15 U.S.C. 78c(a)(6)) or any foreign bank?

Section VI ***Complete this section for control issues relating to ITEM 10B only.***

Provide the details for each organization or institution that *controls* the *applicant*, including each organization or institution in the *applicant's* chain of ownership. The details supplied relate to:

1.	Financial Institution Name	CRD Number (if applicable)
Institution Type (*e.g., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, foreign bank.*)	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /
Business Address (Street, City, State/Country, Zip + 4/Postal Code	If foreign, country of domicile or incorporation	
Briefly describe the control relationship. Use reverse side of this sheet for additional comments, if necessary.		

2.	Financial Institution Name	CRD Number (if applicable)
Institution Type (*e.g., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, foreign bank.*)	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /
Business Address (Street, City, State/Country, Zip + 4/Postal Code	If foreign, country of domicile or incorporation	
Briefly describe the control relationship. Use reverse side of this sheet for additional comments, if necessary.		

3.	Financial Institution Name	CRD Number (if applicable)
Institution Type (*e.g., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, foreign bank.*)	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /
Business Address (Street, City, State/Country, Zip + 4/Postal Code	If foreign, country of domicile or incorporation	
Briefly describe the control relationship. Use reverse side of this sheet for additional comments, if necessary.		

4.	Financial Institution Name	CRD Number (if applicable)
Institution Type (*e.g., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, foreign bank.)*	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /
Business Address (Street, City, State/Country, Zip + 4/Postal Code	If foreign, country of domicile or incorporation	
Briefly describe the control relationship. Use reverse side of this sheet for additional comments, if necessary.		

If applicant has more than 4 organizations/institutions to report, complete additional Schedule D page 3s.

Schedule E of FORM SBSE Page 1	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	Official Use

INSTRUCTIONS

General: Use this schedule to identify other business locations of the *applicant.* Repeat Items 1-6 for each other business location. Each item must be completed unless otherwise noted. Use additional copies of this schedule as necessary.

Specific:

Item 1. Specify only one box. Check "Add" when the applicant is filing the initial notice to inform the Commission that it has opened another business location, "Delete'' when the applicant closes another business location, and "Amendment" to indicate any other change to previously filed information.

Item 2. Complete this item for all entries. Provide the date that the other business location was opened (ADD), closed (DELETE), or the effective date of the change (AMENDMENT).

Item 3. Complete this item for all entries. A physical location must be included; post office box designations alone are not sufficient.

Item 4. Complete this item only when the *applicant* changes the address of an existing other business location.

Item 5. If the other business location occupies or shares space on premises within a bank, or other financial institution, enter the name of the institution in the space provided.

Item 6. Complete this item for all entries. Enter the name of the associated person who is responsible for the operations of, and is physically at, this location.

1. Check only one box: [ ] Add [ ] Delete [ ] Amendment
2. Effective Date:
3. Street:
   P.O. Box (if applicable), Suite, Floor:
   City, State/Country, Zip Code +4/Postal Code:
4. Street:
   P.O. Box (if applicable), Suite, Floor:
   City, State/Country, Zip Code +4/Postal Code:
5. Institution Name:
6. Responsible Associated Person:

1. Check only one box: [ ] Add [ ] Delete [ ] Amendment
2. Effective Date:
3. Street:
   P.O. Box (if applicable), Suite, Floor:
   City, State/Country, Zip Code +4/Postal Code:
4. Street:
   P.O. Box (if applicable), Suite, Floor:
   City, State/Country, Zip Code +4/Postal Code:
5. Institution Name:
6. Responsible Associated Person:

1. Check only one box: [ ] Add [ ] Delete [ ] Amendment
2. Effective Date:
3. Street:
   P.O. Box (if applicable), Suite, Floor:
   City, State/Country, Zip Code +4/Postal Code:
4. Street:
   P.O. Box (if applicable), Suite, Floor:
   City, State/Country, Zip Code +4/Postal Code:
5. Institution Name:
6. Responsible Associated Person:

Schedule F of FORM SBSE **NONRESIDENT SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS**	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**

Each nonresident security-based swap dealer and non-resident security-based swap participant shall use Schedule F to identify its United States agent for service of process and the certify that it can

(1) provide the Commission with prompt access to its books and records, and

(2) submit to onsite inspection and examination by the Commission.

1. Service of Process:

A. Name of United States person *applicant* designates and appoints as agent for service of process

B. Address of United States person *applicant* designates and appoints as agent for service of process

The above identified agent for service of process may be served any process, pleadings, subpoenas, or other papers in

(a) any investigation or administrative proceeding conducted by the Commission that relates to the *applicant* or about which the *applicant* may have information; and

(b) any civil or criminal suit or action or proceeding brought against the *applicant* or to which the *applicant* has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of any of its territories or possessions or of the District of Columbia, to enforce the Exchange Act. The *applicant* has stipulated and agreed that any such suit, action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon the above-named Agent for Service of Process, and that service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

2. Certification regarding access to records:

Applicant can as a matter of law;

(1) provide the Commission with prompt access to its books and records, and

(2) submit to onsite inspection and examination by the Commission.

Applicant must attach to this Form SBSE a copy of the opinion of counsel it is required to obtain in accordance with paragraph (c)(2) or (c)(3) of Exchange Act Rule 15Fb2-4, as appropriate [paragraphs (c)(2) or (c)(3) of 17 CFR 240.15Fb2-4.

Signature:

Name and Title:

Date:

Schedule G of FORM SBSE **CERTIFICATION ON STATUTORY DISQUALIFICATION**	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**

Use Schedule G to certify that none of the *applicant's* associated persons is subject to statutory disqualification (as that term is defined in Section 3(a)(39) of the Exchange Act [15 U.S.C. 78c(a)(39)].

Instructions: This certification must be signed by the *applicant's* Chief Compliance Officer designated pursuant to Exchange Act Section 15F(k) or by his or her designee.

For purposes of this Form, the term *associated person* shall have the meaning as specified in Section 3(a)(70) of the Exchange Act [15 U.S.C. 78c(a)(70)].

This is a: [ ] CERTIFICATION [ ] RE-CERTIFICATION

The *applicant* certifies that it has

(a) performed background checks on all of its *associated persons* who effect or are involved in effecting, or who will effect or be involved in effecting, security-based swaps on its behalf, and

(b) determined that no *associated person* who effects or is involved in effecting, or who will effect or be involved in effecting, security-based swaps on its behalf is subject to statutory disqualification, as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(39)].

Applicant Name:	Date:
Signature of Chief Compliance Officer or Designee:	
Name of Chief Compliance Officer or Designee:	If Designee, Title of Designee:

CRIMINAL DISCLOSURE REPORTING PAGE (SBSE)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (SBSE)] is an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Items 12A and 12B*** of Form SBSE;

Check **[√]** item(s) being responded to:

12A. In the past ten years has the applicant or a control affiliate:

[ ] (1) Been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any felony?

[ ] (2) Been charged with a felony?

12B. In the past ten years has the applicant or a control affiliate:

[ ] (1) Been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?

[ ] (2) Been charged with a misdemeanor specified in 12B(1)?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the above items.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (SBSE). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

Applicants must attach a copy of each applicable court document (*i.e.*, criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) if not previously submitted through CRD (as they could be in the case of a *control affiliate* registered through CRD). Documents will not be accepted as disclosure in lieu of answering the questions on this DRP.

PART I

A. The *person(s)* or entity(ies) for whom this DRP (SBSE) is being filed is (are):

[ ] The *Applicant*

[ ] *Applicant* and one or more *control affiliate(s)*

[ ] One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Applicant*

SBSE DRP – CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is [ ] Firm [ ] Individual

Registered: [ ] Yes [ ] No

NAME (For individuals, Last, First, Middle)

[ ] This DRP should be removed from the SBS Entity's record because the control affiliate(s) are no longer associated with the SBS Entity.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *control affiliate* of its obligation to update its CRD records.

CRIMINAL DISCLOSURE REPORTING PAGE (SBSE)

(continuation)

PART II

1. If charge(s) were brought against an organization over which the applicant or control affiliate exercise(d) control: Enter organization name, whether or not the organization was an investment-related business and the applicant's or control affiliate's position, title or relationship.

_____

2. Formal Charge(s) were brought in: (include name of Federal, Military, State or Foreign Court, Location of Court – City or County and State or Country, Docket/Case number).

_____

3. Event Disclosure Detail (Use this for both organizational and individual charges.)

A. Date First Charged (MM/DD/YYYY): [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

B. Event Disclosure Detail (include Charge(s)/Charge Description(s), and for each charge provide: 1. number of counts, 2. *felony* or *misdemeanor*, 3. plea for each charge, and 4. product type if charge is *investment-related*):

_____

_____

_____

C. Current status of the Event? [ ] Pending [ ] On Appeal [ ] Final

D. Event Status Date (complete unless status is Pending) (MM/DD/YYYY): [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

4. Disposition Disclosure Detail: Include for each charge, A. Disposition Type [e.g., convicted, acquitted, dismissed, pretrial.], B. Date, C. Sentence/Penalty, D. Duration [if sentence-suspension, probation, etc.], E. Start Date of Penalty, F. Penalty/Fine Amount and G. Date Paid.

_____

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5. Provide a brief summary of the circumstances leading to the charge(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the char(s) occurred. (The information must fit within the space provided.)

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REGULATORY ACTION DISCLOSURE REPORTING PAGE (SBSE)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (SBSE)] is an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Items 12C, 12D, 12E, 12F, or 12G*** of Form SBSE;

Check **[√]** item(s) being responded to:

12C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

[ ] (1) Found the applicant or a control affiliate to have made a false statement or omission?

[ ] (2) Found the applicant or a control affiliate to have been involved in a violation of its regulations or statutes?

[ ] (3) the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, revoked, or restricted?

[ ] (4) Entered an order against the applicant or a control affiliate in connection with investment-related activity?

[ ] (5) Imposed a civil money penalty on the applicant or a control affiliate, or ordered the applicant or a control affiliate to cease and desist from any activity?

12D. Has any other federal regulatory agency, state regulatory agency, or foreign financial regulatory authority:

[ ] (1) Ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair, or unethical?

[ ] (2) Ever found the applicant or a control affiliate to have been involved in a violation of investment-related regulations or statutes?

[ ] (3) Ever found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?

[ ] (4) In the past ten years, entered an order against the applicant or a control affiliate in connection with an investment-related activity?

[ ] (5) Ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license or otherwise, by order, prevented it from associating with an investment-related business or restricted its activities?

12E. Has any self-regulatory organization or commodities exchange ever:

[ ] (1) found the applicant or a control affiliate to have made a false statement or omission?

[ ] (2) found the applicant or a control affiliate to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the U.S. Securities and exchange Commission)?

[ ] (3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?

[ ] (4) Disciplined the applicant or a control affiliate by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?

12F. [ ] Has the applicant's or a control affiliate's authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?

12G. [ ] Is the applicant or a control affiliate now the subject of any regulatory proceeding that could result in a "yes" answer to any part of 11C, D, or E?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 12C, 12D, 12E, 12F or 12G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

It is not a requirement that documents be provided for each event or proceeding. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (SBSE). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

[ ] The *Applicant*

[ ] Applicant and one or more *control affiliate(s)*

[ ] One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Applicant*

SBSE DRP – CONTROL AFFILIATE

CRD NUMBER	This *Control Affiliate* is [ ] Firm [ ] Individual

Registered: [ ] Yes [ ] No

NAME (For individuals, Last, First, Middle)

[ ] This DRP should be removed from the SBS Entity's record because the control affiliate(s) are no longer associated with the SBS Entity.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *control affiliate* of its obligation to update its CRD records.

REGULATORY ACTION DISCLOSURE REPORTING PAGE (SBSE)

(continuation)

PART II

1. Regulatory Action initiated by:

[ ] SEC [ ] Other Federal [ ] State [ ] SRO [ ] Foreign

(Full name of regulator, foreign financial regulatory authority, federal, state or SRO)

2. Principal Sanction: (check appropriate item)

[ ] Civil and Administrative Penalty(ies)/Fine(s)
[ ] Bar
[ ] Cease and Desist
[ ] Censure
[ ] Denial
[ ] Disgorgement
[ ] Expulsion
[ ] Injunction
[ ] Prohibition
[ ] Reprimand
[ ] Restitution
[ ] Revocation
[ ] Suspension
[ ] Undertaking
[ ] Other _____

Other Sanctions:

_____
_____
_____

3. Date Initiated (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

4. Docket/Case Number:

5. Control Affiliate Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type: (check appropriate item)

[ ] Annuity(ies) - Fixed
[ ] Annuity(ies) – Variable
[ ] Banking Products (other than CD(s))
[ ] CD(s)
[ ] Commodity Option(s)
[ ] Debt – Asset Backed
[ ] Debt - Corporate
[ ] Debt - Government
[ ] Debt - Municipal
[ ] Derivative(s)
[ ] Direct Investment(s) – DPP & LP Interest(s)
[ ] Equity - OTC
[ ] Equity Listed (Common & Preferred Stock)
[ ] Futures - Commodity
[ ] Futures - Financial
[ ] Index Option(s)
[ ] Insurance
[ ] Investment Contract(s)
[ ] Money Market Fund(s)
[ ] Mutual Fund(s)
[ ] No Product
[ ] Options
[ ] Penny Stock(s)
[ ] Unit Investment Trust(s)
[ ] Other _____

Other Product Type:

7. Describe the allegations related to this regulatory action. (The information must fit within the space provided.):

_____
_____
_____
_____

8. Current Status? [ ] Pending [ ] On Appeal [ ] Final

9. If on appeal, regulatory action appealed to: (SEC, SRO, Federal or State Court) and Date Appeal Filed:

REGULATORY ACTION DISCLOSURE REPORTING PAGE (SBSE)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved: (check appropriate item)

[ ] Acceptance, Waiver & Consent (AWC) [ ] Consent [ ] Settled
[ ] Decision & Order of Offer of Settlement [ ] Dismissed [ ] Stipulation and Consent
[ ] Decision [ ] Order [ ] Vacated

11. Resolution Date (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation:

12. A. Were any of the following Sanctions Ordered? (Check all appropriate items):

[ ] Monetary/Fine [ ] Revocation/Expulsion/Denial [ ] Disgorgement/Restitution
Amount $_____ [ ] Censure [ ] Cease and Desist/Injunction [ ] Bar [ ] Suspension

B. Other Sanctions Ordered:

C. Sanction Detail: If suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification, by exam/retraining was a condition of the sanction, provide length of time given to re-qualify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against applicant or control affiliate, date paid and if any portion of penalty was waived.

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates. (The information must fit within the space provided.)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (SBSE)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (BD)] is an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Items 12H*** of Form BD;

Check **[√]** item(s) being responded to:

12H(1) Has any domestic or foreign civil judicial court:

[ ] (a) in the past ten years, enjoined the applicant or a control affiliate in connection with any investment-related activity?

[ ] (b) ever found that the applicant or a control affiliate was involved in a violation of investment-related statutes or regulations?

[ ] (c) ever dismissed, pursuant to a settlement agreement, an investment-related civil judicial action brought against the applicant or a control affiliate by a state or foreign financial regulatory authority?

12H(2) [ ] Is the applicant or a control affiliate now the subject of any civil judicial proceeding that could result in a "yes" answer to any part of 12H(1)?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11H. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

It is not a requirement that documents be provided for each event or proceeding. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (SBSE). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

[ ] The *Applicant*

[ ] Applicant and one or more *control affiliate(s)*

[ ] One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Applicant*

DRP SBSE – CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is [ ] Firm [ ] Individual

Registered: [ ] Yes [ ] No

NAME (For individuals, Last, First, Middle)

[ ] This DRP should be removed from the SBS Entity's record because the control affiliate(s) are no longer associated with the SBS Entity.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *control affiliate* of its obligation to update its CRD records.

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (SBSE)

(continuation)

PART II

1. Court Action initiated by: (Name of regulator, foreign financial regulatory authority, SRO, commodities exchange, agency, firm, private plaintiff, etc.)

2. Principal Relief Sought: (check appropriate item)

[ ] Cease and Desist
[ ] Civil Penalty(ies)/Fine(s)
[ ] Disgorgement
[ ] Injunction
[ ] Money Damages (Private/Civil Complaint)
[ ] Restitution
[ ] Restraining Order
[ ] Other _____

Other Relief Sought:

3. Filing Date of Court Action (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

4. Principal Product Type: (check appropriate item)

[ ] Annuity(ies) - Fixed
[ ] Annuity(ies) - Variable
[ ] Banking Products (other than CD(s))
[ ] CD(s)
[ ] Commodity Option(s)
[ ] Debt – Asset Backed
[ ] Debt - Corporate
[ ] Debt - Government
[ ] Debt - Municipal
[ ] Derivative(s)
[ ] Direct Investment(s) – DPP & LP Interest(s)
[ ] Equity - OTC
[ ] Equity Listed (Common & Preferred Stock)
[ ] Futures - Commodity
[ ] Futures - Financial
[ ] Index Option(s)
[ ] Insurance
[ ] Investment Contract(s)
[ ] Money Market Fund(s)
[ ] Mutual Fund(s)
[ ] No Product
[ ] Options
[ ] Penny Stock(s)
[ ] Unit Investment Trust(s)
[ ] Other _____

Other Product Type:

5. Formal Action was brought in (include name of Federal, State or Foreign Court, Location of Court – City or County and State or Country, Docket/Case Number):

6. Control Affiliate Employing Firm when activity occurred which led to the civil judicial action (if applicable):

7. Describe the allegations related to this civil judicial action. (The information must fit within the space provided.):

8. Current Status? [ ] Pending [ ] On Appeal [ ] Final

9. If on appeal, action appealed to (provide name of court): Date Appeal Filed (MM/DD/YYYY):

10. If pending, date notice/process was served (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation:

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (SBSE)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved: (check appropriate item)

[ ] Consent [ ] Judgement Rendered [ ] Settled
[ ] Dismissed [ ] Opinion [ ] Withdrawn [ ] Other _____

12. Resolution Date (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation:

13. Resolution Detail

A. Were any of the following Sanctions Ordered or Relief Granted? (Check all appropriate items):

[ ] Monetary/Fine [ ] Revocation/Expulsion/Denial [ ] Disgorgement/Restitution
Amount $_____ [ ] Censure [ ] Cease and Desist/Injunction [ ] Bar [ ] Suspension

B. Other Sanctions:

C. Sanction Detail: If suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification, by exam/retraining was a condition of the sanction, provide length of time given to re-qualify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against applicant or control affiliate, date paid and if any portion of penalty was waived.

14. Provide a brief summary of details related to action(s), allegation(s), disposition(s), and/or finding(s) disclosed above. (The information must fit within the space provided.)

BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (SBSE)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (SBSE)] is an an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Questions 12l*** on Form SBSE;

Check **[√]** item(s) being responded to:

12l In the past ten years has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:

[ ] (1) has been the subject of a bankruptcy petition?

[ ] (2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (SBSE). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person* or entity for whom this DRP (SBSE) is being filed is:

[ ] The *Applicant*

[ ] Applicant and one or more *control affiliate(s)*

[ ] One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Applicant*

BD DRP – CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is [ ] Firm [ ] Individual

Registered: [ ] Yes [ ] No

NAME (For individuals, Last, First, Middle)

[ ] This DRP should be removed from the SBS Entity's record because the control affiliate(s) are no longer associated with the SBS Entity.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *control affiliate* of its obligation to update its CRD records.

PART II

1. Action Type: (check appropriate item)

[ ] Bankruptcy [ ] Declaration [ ] Receivership

[ ] Compromise [ ] Liquidated [ ] Other _____

2. Action Date (MM/DD/YYYY) _____ [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

(continued)

3. If the financial action relates to an organization over which the *applicant* or the *control affiliate* exercise(d) *control*, enter organization name and the applicant's or control affiliate's position, title or relationship:

_____

Was the Organization investment-related? [ ] Yes [ ] No

4. Court action brought in (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country), Docket/Case Number and Bankruptcy Chapter Number (if Federal Bankruptcy Filing):

_____

5. Is action currently pending? [ ] Yes [ ] No

6. If not pending, provide Disposition Type: (check appropriate item)

[ ] Direct Payment Procedure [ ] Dismissed [ ] Satisfied/Released

[ ] Discharged [ ] Dissolved [ ] SIPA Trustee Appointed [ ] Other _____

7. Disposition Date (MM/DD/YYYY): _____ [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

8. Provide a brief summary of events leading to the action and if not discharged, explain. (The information must fit within the space provided.):

_____
_____
_____
_____
_____

9. If a SIPA trustee was appointed or a direct payment procedure was begun, enter the amount paid or agreed to be paid by you; or the name of the trustee:

Currently open? [ ] Yes [ ] No

Date Direct Payment Initiated/Filed or Trustee Appointed (MM/DD/YYYY): _____ [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

10. Provide details of any status/disposition. Include details of creditors, terms, conditions, amounts due and settlement schedule (if applicable). (The information must fit within the space provided.)

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Form SBSE-A

OMB Approval
OMB Number: .....3235-____ Expires:..... ..Month __, 2014 Estimated average burden hours per response: . . . . . _____. per amendment: . . . . . _____.

Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants that are Registered or Registering with the Commodity Futures Trading Commission as a Swap Dealer or Major Swap Participant

FORM SBSE-A INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. **FORM** - Form SBSE-A is the Application for Registration as either a Security-based Swap Dealer or Major Security-based Swap Participant (collectively, "SBS Entities") by an entity that is not registered or registering with the Commission as a broker-dealer but is registered or registering with the Commodity Futures Trading Commission ("CFTC") as a swap dealer or major swap participant. **These SBS Entities must file this form and a copy of the Form 7-R they file with the CFTC (or its designee) to register with the Securities and Exchange Commission.** An applicant must also file Schedules A, B, C, F, and G, as appropriate. There are no Schedules D, or E. An entity that is registered with the Commission as a broker-dealer and also is registered or registering with the Commodity Futures Trading Commission ("CFTC") as a swap dealer or major swap participant should file Form SBSE-BD to register with the Commission as an SBS Entity.
2. **ELECTRONIC FILING** - This Form SBSE-A must be filed electronically with the Commission through the EDGAR system, and must utilize the EDGAR Filer Manual (as defined in 17 CFR 232. 11) to file and amend Form SBSE-A electronically to assure the timely acceptance and processing of those filings.[187] Additional documents shall be attached to this electronic application.
3. **UPDATING** - By law, the *applicant* must promptly update Form SBSE-A information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason [17 CFR 240.15Fb2-2]. In addition, the applicant must update any incomplete or inaccurate information contained on Form SBSE-A prior to filing a notice of withdrawal from registration on Form SBSE-W [17 CFR 15Fb3-2(a)].
4. **CONTACT EMPLOYEE** - The individual listed as the contact employee must be authorized to receive all compliance information, communications, and mailings, and be responsible for disseminating it within the *applicant's* organization.
4. **FEDERAL INFORMATION LAW AND REQUIREMENTS -** 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 control number. Sections 15F, 17(a) and 23(a) of the Exchange Act authorize the SEC to collect the information on this form from registrants. See 15 U.S.C. §§78o-10, 78q and 78w. Filing of this form is mandatory; however, the social security number information, which aids in identifying the applicant, is voluntary. The principal purpose of this Form is to permit the Commission to determine whether the *applicant* meets the statutory requirement to engage in the security-based swap business. The Commission maintain[s] a file of the information on this form and will make certain information collected via the form publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

C. FILING INSTRUCTIONS

1. **FORMAT**
   a. Items 1-16 and the accompanying Schedules and DRP pages must be answered and all fields requiring a response must be completed before the filing will be accepted.
   b. *Applicant* must complete the execution screen certifying that Form SBSE-A and amendments thereto have been executed properly and that the information contained therein is accurate and complete.
   c. To amend information, the *applicant* must update the appropriate Form SBSE-A screens.
   d. A paper copy, with original signatures, of the initial Form SBSE-A filing [and amendments to Disclosure Reporting Pages (DRPs)] must be retained by the *applicant* and be made available for inspection upon a regulatory request.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning a *principal* that relates to the occurrence of an event reportable in Schedule C must be provided on the appropriate DRP.

The mailing address for questions and correspondence is:

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[187] As discussed in the release proposing this Form, the Commission is currently developing a system to facilitate receipt of applications electronically. More specific instructions on how to file this Form may be included in the final version of the Form.

EXPLANATION OF TERMS
(The following terms are italicized throughout this form.)

1. GENERAL

Terms used in this Form SBSE-A that are defined in the form the CFTC requires that swap dealers and major swap participants use to apply for registration with the CFTC shall have the same meaning as set forth in that form.

APPLICANT - The security-based swap dealer or major security-based swap participant applying on or amending this form.

CONTROL - The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any *person* that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to *control* that company.

JURISDICTION - A state, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or any subdivision or regulatory body thereof.

SUCCESSOR –The term "successor" is defined to be an unregistered entity that assumes or acquires substantially all of the assets and liabilities, and that continues the business of, a predecessor security-based swap dealer or major security-based swap participants that ceases its security-based swap activities. [See Exchange Act Rule 15b2-5 (17 CFR 240.15Fb2-5)]

3. FOR THE PURPOSE OF SCHEDULE C AND THE CORRESPONDING DISCLOSURE REPORTING PAGES (DRPs)

FOREIGN FINANCIAL REGULATORY AUTHORITY - Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a *self-regulatory organization* empowered by a foreign government to administer or enforce its laws relating to the regulation of *financial services industry-related* activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above.

FINANCIAL SERVICES INDUSTRY-RELATED – Pertaining to securities, commodities, banking, savings association activities, credit union activities, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, security-based swap dealer, major security-based swap participant, savings association, credit union, insurance company, or insurance agency). (This definition is used solely for the purpose of Form SBSE-A.)

INVOLVED - Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

ORDER - A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an *order*.

PROCEEDING - Includes a formal administrative or civil action initiated by a governmental agency, *self-regulatory organization* or a *foreign financial regulatory authority*; a *felony* criminal indictment or information (or equivalent formal charge); or a *misdemeanor* criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

FORM SBSE-A Page 1 (Execution Page)	**Application for Registration as a Security-based Swap Dealer and Major Security-based Swap Participant that is Registered or Registering with the CFTC as a Swap Dealer or Major Swap Participant** Date:_____ *Applicant* NFA Number: _____	**Official Use**	Official Use Only

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as an SBS Entity, would violate the Federal securities laws and the laws of the *jurisdictions* and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

[ ] APPLICATION [ ] AMENDMENT

1. Exact name, principal business address, mailing address, if different, and telephone number of the *applicant:*

A. Full name of the *applicant*:

B. IRS Empl. Ident. No.:

C. Applicant's NFA ID #: Applicant's CIK # (if any):

D. *Applicant's* Main Address: (Do not use a P.O. Box)

Number and Street 1: Number and Street 2:

City: State: Country: Zip/Postal Code:

E. Mailing Address, if different:

Number and Street 1: Number and Street 2:

City: State: Country: Zip/Postal Code:

F. Business Telephone Number:

G Website/URL:

H. Contact Employee:

Name: Title:

Telephone Number: Email Address:

I. Chief Compliance Officer designated by the *applicant* in accordance with Exchange Act Section 15F(k):

Name: Title:

Telephone Number: Email Address:

EXECUTION:

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission in connection with the applicant's security-based swap activities, unless the applicant is a nonresident SBS Entity , may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Items 1E and 1F. If the applicant is a nonresident SBS Entity, it must complete Schedule F to designate a U.S. agent for service of process.

The undersigned certifies that he/she has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including schedules attached hereto, and other information filed herewith are current, true and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

Date (MM/DD/YYYY) Name of Applicant

By: Signature Name and Title of Person Signing on *Applicant's* behalf

This page must always be completed in full.

DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY

FORM SBSE-A Page 2	*Applicant* Name: _____ Date:_____ *Applicant* NFA No.: _____	**Official Use**	Official Use Only

2. A. The *applicant* is registering as a security-based swap dealer: [ ] Yes [ ] No

   B. The *applicant* is registering as a major security-based swap participant: [ ] Yes [ ] No
   Because it: (check all that apply)
   [ ] maintains a substantial security-based swap position
   [ ] has substantial counterparty exposure [ ] is highly leveraged relative to its capital position

3. Does the *applicant* intend to compute capital or margin, or price customer or proprietary positions, using mathematical models? [ ] Yes [ ] No

4. A. The *applicant* is currently registered with the Commodity Futures Trading Commission as a:
   [ ] Swap Dealer [ ] Major Swap Participant

   B. The *applicant* is registering with the Commodity Futures Trading Commission as a:
   [ ] Swap Dealer [ ] Major Swap Participant

5. Briefly describe the *applicant's* business: _____
   _____
   _____
   _____
   _____

		YES	NO
6.	Is the *applicant* subject to regulation by a prudential regulator, as defined in Section 1a(39) of the Commodity Exchange Act. If "*yes*," identify the prudential regulator: _____.	[ ]	[ ]
7.	Is the *applicant* registered with the Commission as an investment adviser? Applicant's IARD #: _____	[ ]	[ ]
8. A.	Is the *applicant* registered with the Commodity Futures Trading Commission in any capacity other than as a swap dealer or major swap participant?	[ ]	[ ]
B.	If "yes," as a: [ ] Futures Commission Merchant [ ] Introducing Broker [ ] Commodity Pool Operator [ ] Other: _____		
9.	Does *applicant* engage in any other non-securities, *financial services industry-related* business? *If "yes," describe each other business briefly on Schedule B, Section I.*	[ ]	[ ]
10.	Does the *applicant* hold or maintain any funds or securities to collateralize counterparty transactions?	[ ]	[ ]
11.	Does the *applicant* have any arrangement:		
A.	With any other *person*, firm, or organization under which any books or records of the *applicant* are kept, maintained, or audited by such other *person*, firm or organization?	[ ]	[ ]
B.	Under which such other person, firm or organization executes, trades, custodies, clears or settles on behalf of the applicant (including any *SRO* in which the applicant is a member)? *If "yes" to any part of Item 11, complete appropriate items on Schedule B, Section II.*	[ ]	[ ]
12.	Does any *person* directly or indirectly *control* the management or policies of the *applicant* through agreement or otherwise? *If "yes," complete appropriate item on Schedule B, Section II.*	[ ]	[ ]
13.	Does any *person* directly or indirectly finance (wholly or partially) the business of the *applicant*? *Do not answer "Yes" to Item 13 if the person finances the business of the applicant through: 1) a public offering of securities made pursuant to the Securities Act of 1933; or 2) credit extended in the ordinary course of business by suppliers, banks, and others.* *If "yes," complete appropriate item on Schedule B, Section II.*	[ ]	[ ]
14.	Is the *applicant* at the time of this filing *succeeding* to the business of a currently registered SBS Entity? *If "yes," complete appropriate items on Schedule B, Section III.*	[ ]	[ ]
15.	The applicant has _____ principals who are individuals. *Please list all principals who are individuals on Schedule A.*		
16.	Does any principal not identified in Item 15 and Schedule A effect, or is any principal not identified in Item 15 and Schedule A involved in effecting security-based swaps on behalf of the applicant, or will such principals effect or be involved in effecting such business on the applicant's behalf? *If "yes," complete appropriate item on Schedule B, Section IV.*		

Schedule A of FORM SBSE **PRINCIPALS THAT ARE INDIVIDUALS** (Answer for Form SBSE-A Item 15)	*Applicant* Name: _____ Date:_____ *Applicant* NFA No.: _____	**Official Use**

Use Schedule A to identify all principals of the applicant who are individuals.

Complete the "Title or Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

Ownership Codes are:

NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
A - 5% but less than 10% C - 25% but less than 50% E - 75% or more

	FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Title or Status	Date Title or Status Acquired		Date Individual began working for applicant		Does person have an ownership interest in the applicant	If yes, include ownership code	NFA Identification No., CRD No. and/or IARD No.	Official Use Only
			MM	YYYY	MM	YYYY				
1.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
2.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
3.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
4.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
5.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
6.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
7.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
8.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
9.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
10.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								

Schedule B of FORM SBSE-A Page 1	*Applicant* Name: _____ Date:_____ *Applicant* NFA No.: _____	**Official Use**	Official Use Only

Use this Schedule B to report details for items listed below. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information.

This is an [ ] INITIAL [ ] AMENDED detail filing for the Form SBSE-A items checked below:

Section I *Other Business*

Item 9: Does *applicant* engage in any other non-securities, *financial services industry-related* business?

Unique Identification Number(s):	*Assigning Regulator(s)/Entity(s):*

Briefly describe any other *financial services industry-related*, non-securities business in which the applicant is engaged:

Section II *Record Maintenance Arrangements / Business Arrangements / Control Persons / Financings*

(Check one) [ ] Item 11A [ ] Item 11B [ ] Item 12 [ ] Item 13

Applicant must complete a separate Schedule B Page 1 for each affirmative response in this section including any multiple responses to any item. Complete the "Effective Date" box with the Month, Day and Year that the arrangement or agreement became effective. When reporting a change or termination of an arrangement, enter the effective date of the change.

Firm or Organization Name	SEC File, CRD, NFA, IARD, and/or CIK Number (if any)	
Business Address *(Street, City, State/Country, Zip + 4 Postal Code)*	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /
Individual Name	CRD, NFA, and/or IARD Number (if any)	
Business Address (if applicable) *(Street, City, State/Country, Zip + 4 Postal Code)*	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /

Briefly describe the nature of the arrangement with respect to books or records (ITEM 11A); the nature of the execution, trading, custody, clearing or settlement arrangement (ITEM 11B); the nature of the control or agreement (ITEM 12); or the method and amount of financing (ITEM 13). Use reverse side of this sheet for additional comments if necessary.

For ITEM 12 ONLY - If the control person is an individual not presently registered through CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service).

Section III *Successions*

Item 14: Is the *applicant* at the time of this filing *succeeding* to the business of a currently registered SBS Entity?

Date of Succession MM DD YYYY / /	*Name of Predecessor*
SEC File, CRD, NFA, IARD, and/or CIK Number (if any)	IRS Employer Number (if any)

Briefly describe details of the succession including any assets or liabilities not assumed by the successor. Use reverse side of this sheet for additional comments if necessary.

Section IV *Principals Effecting or Involved in Effecting SBS Business*

Item 16: Does any principal not identified in Item 15 and Schedule A effect, or is any principal not identified in Item 15 and Schedule A involved in effecting security-based swaps on behalf of the applicant, or will such principals effect or be involved in effecting such business on the applicant's behalf?

For each Principal identified in Section IV, complete Schedule C of the Form SBSE-A and the relevant DRP pages.

1.	Name of Principal	Type of Entity (Corp, Partnership, LLC, etc.)	SEC File No., CRD, NFA, IARD, CIK Number, and/or Tax Identification Number
	Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)		
	This entity [ ] effects [ ] is involved in effecting security based swaps on behalf of the applicant. (*check only one*)		

Briefly describe the details of the principal's activities relating to its effecting or involvement in effecting security-based swap transactions on behalf of the applicant:

Schedule B of FORM SBSE-A Page 2	*Applicant* Name: _____ Date:_____ *Applicant* NFA No.: _____	Official Use	Official Use Only

Section IV, Continued ***Principals Effecting or Involved in Effecting SBS Business***

For each Principal identified in Section IV, complete Schedule C of the Form SBSE-A and the relevant DRP pages.

2.	Name of Principal	Type of Entity (Corp, Partnership, LLC, etc.)	SEC File No., CRD, NFA, IARD, CIK Number, and/or Tax Identification Number
	Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)		
	This entity [ ] effects [ ] is involved in effecting security based swaps on behalf of the applicant. (*check only one*)		
Briefly describe the details of the principal's activities relating to its effecting or involvement in effecting security-based swap transactions on behalf of the applicant:			
3.	Name of Principal	Type of Entity (Corp, Partnership, LLC, etc.)	SEC File No., CRD, NFA, IARD, CIK Number, and/or Tax Identification Number
	Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)		
	This entity [ ] effects [ ] is involved in effecting security based swaps on behalf of the applicant. (*check only one*)		
Briefly describe the details of the principal's activities relating to its effecting or involvement in effecting security-based swap transactions on behalf of the applicant:			
4.	Name of Principal	Type of Entity (Corp, Partnership, LLC, etc.)	SEC File No., CRD, NFA, IARD, CIK Number, and/or Tax Identification Number
	Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)		
	This entity [ ] effects [ ] is involved in effecting security based swaps on behalf of the applicant. (*check only one*)		
Briefly describe the details of the principal's activities relating to its effecting or involvement in effecting security-based swap transactions on behalf of the applicant:			
5.	Name of Principal	Type of Entity (Corp, Partnership, LLC, etc.)	SEC File No., CRD, NFA, IARD, CIK Number, and/or Tax Identification Number
	Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)		
	This entity [ ] effects [ ] is involved in effecting security based swaps on behalf of the applicant. (*check only one*)		
Briefly describe the details of the principal's activities relating to its effecting or involvement in effecting security-based swap transactions on behalf of the applicant:			
6.	Name of Principal	Type of Entity (Corp, Partnership, LLC, etc.)	SEC File No., CRD, NFA, IARD, CIK Number, and/or Tax Identification Number
	Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)		
	This entity [ ] effects [ ] is involved in effecting security based swaps on behalf of the applicant. (*check only one*)		
Briefly describe the details of the principal's activities relating to its effecting or involvement in effecting security-based swap transactions on behalf of the applicant:			

Schedule C of FORM SBSE-A Page 1	*Applicant* Name: _____ *Principal* Name: _____ Date:_____ *Applicant* NFA No.: _____	**Official Use**	Official Use Only

Use the appropriate DRP for providing details to "yes" answers to the questions in Schedule C. Refer to the Explanation of Terms section of Form SBSE-A Instructions for explanations of italicized terms.

		YES	NO
CRIMINAL DISCLOSURE	A. In the past ten years has the *principal*:		
	(1) Been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *felony*?	[ ]	[ ]
	(2) Been charged with a *felony*	[ ]	[ ]
	B. In the past ten years has the *principal*:		
	(1) Been convicted of or pled guilty or or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving*: *financial services industry-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	[ ]	[ ]
	(2) Been *charged* with a *misdemeanor* specified in B(1)?	[ ]	[ ]
REGULATORY ACTION DISCLOSURE	C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
	(1) *Found* the *principal* to have made a false statement or omission?	[ ]	[ ]
	(2) *Found* the *principal* to have been involved in a violation of its regulations or statutes?	[ ]	[ ]
	(3) *Found* the *principal* to have been a cause of a *financial services industry-related* business having its authorization to do business denied, revoked, or restricted?	[ ]	[ ]
	(4) Entered an *order* against the *principal* in connection with *financial services industry-related* activity?	[ ]	[ ]
	(5) Imposed a civil money penalty on the *principal*, or ordered the *principal* to cease and desist from any activity?	[ ]	[ ]
REGULATORY ACTION DISCLOSURE	D. Has any other federal regulatory agency, state regulatory agency, or *foreign financial regulatory authority*:		
	(1) Ever found the *principal* to have made a false statement or omission or been dishonest, unfair, or unethical?	[ ]	[ ]
	(2) Ever found the *principal* to have been involved in a violation of *financial services industry-related* regulations or statutes?	[ ]	[ ]
	(3) Ever found the *principal* to have been a cause of a *financial services industry-related* business having its authorization to do business denied, suspended, revoked or restricted?	[ ]	[ ]
	(4) In the past ten years, entered an order against the *principal* in connection with a *financial services industry-related* activity?	[ ]	[ ]
	(5) Ever denied, suspended, or revoked the *principal's* registration or license or otherwise, by order, prevented it from associating with a *financial services industry-related* business or restricted its activities?	[ ]	[ ]
	E. Has any *self-regulatory organization* or commodities exchange ever:		
	(1) *found* the *principal* to have made a false statement or omission?	[ ]	[ ]
	(2) *found* the *principal* to have been involved in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and exchange Commission)?	[ ]	[ ]
	(3) *found* the *principal* to have been the cause of a *financial services industry-related* business having its authorization to do business denied, suspended, revoked or restricted?	[ ]	[ ]
	(4) Disciplined the *principal* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?	[ ]	[ ]
	F. Has the *principal's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?	[ ]	[ ]
	G. Is the *principal* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of C, D, or E?	[ ]	[ ]

Schedule C of FORM SBSE-A Page 2	*Applicant* Name: _____ *Principal* Name: _____ Date:_____ *Applicant* NFA No.: _____	Official Use	Official Use Only

CIVIL JUDICIAL DISCLOSURE	H. (1) Has any domestic or foreign civil judicial court:	YES	NO
	(a) In the past ten years, enjoined the *principal* in connection with any *financial services industry-related* activity?	[ ]	[ ]
	(b) Ever *found* that the *principal* was involved in a violation of *financial services industry-related* statutes or regulations?	[ ]	[ ]
	(c) Ever dismissed, pursuant to a settlement agreement, a *financial services industry-related* civil judicial action brought against the *principal* by a state or f*oreign financial regulatory authority*?	[ ]	[ ]
	(2) Is the *principal* now the subject of any civil judicial *proceeding* that could result in a "yes" answer to any part of H(1)?	[ ]	[ ]
FINANCIAL DISCLOSURE	I. In the past ten years has the *principal* ever been a securities firm or a *principal* of a securities firm that:		
	(1) Has been the subject of a bankruptcy petition?	[ ]	[ ]
	(2) Has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?	[ ]	[ ]

Schedule F of FORM SBSE-A **NONRESIDENT SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS**	*Applicant* Name: _____ Date:_____ *Applicant* NFA No.: _____	**Official Use**

Each nonresident security-based swap dealer and non-resident security-based swap participant shall use Schedule F to identify its United States agent for service of process and the certify that it can

(3) provide the Commission with prompt access to its books and records, and

(4) submit to onsite inspection and examination by the Commission.

1. Service of Process:

A. Name of United States person *applicant* designates and appoints as agent for service of process

B. Address of United States person *applicant* designates and appoints as agent for service of process

The above identified agent for service of process may be served any process, pleadings, subpoenas, or other papers in

(a) any investigation or administrative proceeding conducted by the Commission that relates to the *applicant* or about which the *applicant* may have information; and

(b) any civil or criminal suit or action or proceeding brought against the *applicant* or to which the *applicant* has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of any of its territories or possessions or of the District of Columbia, to enforce the Exchange Act. The *applicant* has stipulated and agreed that any such suit, action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon the above-named Agent for Service of Process, and that service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

2. Certification regarding access to records:

Applicant can as a matter of law;

(3) provide the Commission with prompt access to its books and records, and

(4) submit to onsite inspection and examination by the Commission.

Applicant must attach to this Form SBSE a copy of the opinion of counsel it is required to obtain in accordance with paragraph (c)(2) or (c)(3) of Exchange Act Rule 15Fb2-4, as appropriate [paragraphs (c)(2) or (c)(3) of 17 CFR 240.15Fb2-4].

Signature:

Name and Title:

Date:

Schedule G of FORM SBSE-A **CERTIFICATION ON STATUTORY DISQUALIFICATION**	*Applicant* Name: _____ Date:_____ *Applicant* NFA No.: _____	**Official Use**

Use Schedule G to certify that none of the *applicant's* associated persons is subject to statutory disqualification (as that term is defined in Section 3(a)(39) of the Exchange Act [15 U.S.C. 78c(a)(39)].

Instructions: This certification must be signed by the *applicant's* Chief Compliance Officer designated pursuant to Exchange Act Section 15F(k) or by his or her designee.

For purposes of this Form, the term *associated person* shall have the meaning as specified in Section 3(a)(70) of the Exchange Act [15 U.S.C. 78c(a)(70)].

This is a: [ ] CERTIFICATION [ ] RE-CERTIFICATION

The *applicant* certifies that it has

(c) performed background checks on all of its *associated persons* who effect or are involved in effecting, or who will effect or be involved in effecting, security-based swaps on its behalf, and

(d) determined that no *associated person* who effects or is involved in effecting, or who will effect or be involved in effecting, security-based swaps on its behalf is subject to statutory disqualification, as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(39)].

Applicant Name:	Date:
Signature of Chief Compliance Officer or Designee:	
Name of Chief Compliance Officer or Designee:	If Designee, Title of Designee:

CRIMINAL DISCLOSURE REPORTING PAGE (SBSE-A)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (SBSE)] is an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Items A and B*** of Schedule C of Form SBSE-A;

Check **[√]** item(s) being responded to:

A. In the past ten years has the principal:

[ ] (1) Been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any felony?

[ ] (2) Been charged with a felony?

B. In the past ten years has the principal:

[ ] (1) Been convicted of or pled guilty or or nolo contendere ("no contest") in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?

[ ] (2) Been charged with a misdemeanor specified in B(1)?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the above items.

If a *principal* is an organization registered through the CRD, such *principal* need only complete Part I of the *applicant's* appropriate DRP (SBSE-A). Details of the event must be submitted on the *principal's* appropriate DRP (BD) or DRP (U-4). If a *principal* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE-A). The completion of this DRP does not relieve the *principal* of its obligation to update its CRD records.

Applicants must attach a copy of each applicable court document (*i.e.*, criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) if not previously submitted through CRD (as they could be in the case of a *control affiliate* registered through CRD). Documents will not be accepted as disclosure in lieu of answering the questions on this DRP.

PART I

A. If the *principal* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Principal*
CRD NUMBER

Registered: [ ] Yes [ ] No

[ ] This DRP should be removed from the SBS Entity's record because the principal is no longer associated with the SBS Entity.

B. If the *principal* is registered through the CRD, has the *principal* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *principal* of its obligation to update its CRD records.

CRIMINAL DISCLOSURE REPORTING PAGE (SBSE-A)

(continuation)

PART II

1. If charge(s) were brought against an organization over which the principal exercise(d) control: Enter organization name, whether or not the organization was an investment-related business and the principal's position, title or relationship.

_____

2. Formal Charge(s) were brought in: (include name of Federal, Military, State or Foreign Court, Location of Court – City or County and State or Country, Docket/Case number).

_____

3. Event Disclosure Detail (Use this for both organizational and individual charges.)

A. Date First Charged (MM/DD/YYYY): [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

B. Event Disclosure Detail (include Charge(s)/Charge Description(s), and for each charge provide: 1. number of counts, 2. *felony* or *misdemeanor*, 3. plea for each charge, and 4. product type if charge is *investment-related*):

_____

_____

_____

C. Current status of the Event? [ ] Pending [ ] On Appeal [ ] Final

D. Event Status Date (complete unless status is Pending) (MM/DD/YYYY): [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

4. Disposition Disclosure Detail: Include for each charge, A. Disposition Type [e.g., convicted, acquitted, dismissed, pretrial.], B. Date, C. Sentence/Penalty, D. Duration [if sentence-suspension, probation, etc.], E. Start Date of Penalty, F. Penalty/Fine Amount and G. Date Paid.

_____

_____

_____

_____

_____

_____

5. Provide a brief summary of the circumstances leading to the charge(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the char(s) occurred. (The information must fit within the space provided.)

_____

_____

_____

_____

_____

_____

_____

REGULATORY ACTION DISCLOSURE REPORTING PAGE (SBSE-A)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (SBSE)] is an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Items C, D, E, F, or G*** of Schedule C of Form SBSE-A;

Check **[√]** item(s) being responded to:

C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

[ ] (1) Found the principal to have made a false statement or omission?

[ ] (2) Found the principal to have been involved in a violation of its regulations or statutes?

[ ] (3) the principal to have been a cause of an investment-related business having its authorization to do business denied, revoked, or restricted?

[ ] (4) Entered an order against the principal in connection with investment-related activity?

[ ] (5) Imposed a civil money penalty on the principal, or ordered the principal to cease and desist from any activity?

D. Has any other federal regulatory agency, state regulatory agency, or foreign financial regulatory authority:

[ ] (1) Ever found the principal to have made a false statement or omission or been dishonest, unfair, or unethical?

[ ] (2) Ever found the principal to have been involved in a violation of investment-related regulations or statutes?

[ ] (3) Ever found the principal to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?

[ ] (4) In the past ten years, entered an order against the principal in connection with an investment-related activity?

[ ] (5) Ever denied, suspended, or revoked the principal's registration or license or otherwise, by order, prevented it from associating with an investment-related business or restricted its activities?

E. Has any self-regulatory organization or commodities exchange ever:

[ ] (1) found the principal to have made a false statement or omission?

[ ] (2) found the principal to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the U.S. Securities and exchange Commission)?

[ ] (3) found the principal to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?

[ ] (4) Disciplined the principal by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?

F. [ ] Has the principal's authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?

G. [ ] Is the principal now the subject of any regulatory proceeding that could result in a "yes" answer to any part of C, D, or E?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items C, D, E, F or G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

It is not a requirement that documents be provided for each event or proceeding. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If the principal is an organization registered through the CRD, such principal need only complete Part I of the *applicant's* appropriate DRP (SBSE). Details of the event must be submitted on the *principal's* appropriate DRP (BD) or DRP (U-4). If a *principal* is an organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE). The completion of this DRP does not relieve the *prinicipal* of its obligation to update its CRD records.

PART I

A. If the *principal* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Principal*	*Principal's* CRD Number

Registered: [ ] Yes [ ] No

[ ] This DRP should be removed from the SBS Entity record because the control affiliate(s) are no longer associated with the SBS Entity.

B. If the *principal* is registered through the CRD, has the *principal* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *principal* of its obligation to update its CRD records.

REGULATORY ACTION DISCLOSURE REPORTING PAGE (SBSE-A)

(continuation)

PART II

1. Regulatory Action initiated by:

[ ] SEC [ ] Other Federal [ ] State [ ] SRO [ ] Foreign

(Full name of regulator, foreign financial regulatory authority, federal, state or SRO)

2. Principal Sanction: (check appropriate item)

[ ] Civil and Administrative Penalty(ies)/Fine(s)
[ ] Bar
[ ] Cease and Desist
[ ] Censure
[ ] Denial
[ ] Disgorgement
[ ] Expulsion
[ ] Injunction
[ ] Prohibition
[ ] Reprimand
[ ] Restitution
[ ] Revocation
[ ] Suspension
[ ] Undertaking
[ ] Other _____

Other Sanctions:

_____
_____
_____

3. Date Initiated (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

4. Docket/Case Number:

5. Principal Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type: (check appropriate item)

[ ] Annuity(ies) - Fixed
[ ] Annuity(ies) - Variable
[ ] Banking Products (other than CD(s))
[ ] CD(s)
[ ] Commodity Option(s)
[ ] Debt – Asset Backed
[ ] Debt - Corporate
[ ] Debt - Government
[ ] Debt - Municipal
[ ] Derivative(s)
[ ] Direct Investment(s) – DPP & LP Interest(s)
[ ] Equity - OTC
[ ] Equity Listed (Common & Preferred Stock)
[ ] Futures - Commodity
[ ] Futures - Financial
[ ] Index Option(s)
[ ] Insurance
[ ] Investment Contract(s)
[ ] Money Market Fund(s)
[ ] Mutual Fund(s)
[ ] No Product
[ ] Options
[ ] Penny Stock(s)
[ ] Unit Investment Trust(s)
[ ] Other _____

Other Product Type:

7. Describe the allegations related to this regulatory action. (The information must fit within the space provided.):

_____
_____
_____

8. Current Status? [ ] Pending [ ] On Appeal [ ] Final

9. If on appeal, regulatory action appealed to: (SEC, SRO, Federal or State Court) and Date Appeal Filed:

REGULATORY ACTION DISCLOSURE REPORTING PAGE (SBSE-A)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved: (check appropriate item)

[ ] Acceptance, Waiver & Consent (AWC) [ ] Consent [ ] Settled
[ ] Decision & Order of Offer of Settlement [ ] Dismissed [ ] Stipulation and Consent
[ ] Decision [ ] Order [ ] Vacated

11. Resolution Date (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation:

12. A. Were any of the following Sanctions Ordered? (Check all appropriate items):

[ ] Monetary/Fine [ ] Revocation/Expulsion/Denial [ ] Disgorgement/Restitution
Amount $_____ [ ] Censure [ ] Cease and Desist/Injunction [ ] Bar [ ] Suspension

B. Other Sanctions Ordered:

C. Sanction Detail: If suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification, by exam/retraining was a condition of the sanction, provide length of time given to re-qualify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against principal, date paid and if any portion of penalty was waived.

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates. (The information must fit within the space provided.)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (SBSE-A)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (BD)] is an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Item H*** of Schedule C of Form BD;

Check **[√]** item(s) being responded to:

H(1) Has any domestic or foreign civil judicial court:

[ ] (a) in the past ten years, enjoined the principal in connection with any investment-related activity?

[ ] (b) ever found that the principal was involved in a violation of investment-related statutes or regulations?

[ ] (c) ever dismissed, pursuant to a settlement agreement, an investment-related civil judicial action brought against the principal by a state or foreign financial regulatory authority?

H(2) [ ] Is the principal now the subject of any civil judicial proceeding that could result in a "yes" answer to any part of H?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item H. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

It is not a requirement that documents be provided for each event or proceeding. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *principal* is an individual or organization registered through the CRD, such *principal* need only complete Part I of the *applicant's* appropriate DRP (SBSE-A). Details of the event must be submitted on the *principal's* appropriate DRP (BD) or DRP (U-4). If a *principal* is an organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE-A). The completion of this DRP does not relieve the *principal* of its obligation to update its CRD records.

PART I

A. If the *principal* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Principal*
CRD NUMBER

Registered: [ ] Yes [ ] No

[ ] This DRP should be removed from the SBS Entity's record because the principal is no longer associated with the SBS Entity.

B. If the *principal* is registered through the CRD, has the *principal* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *principal* of its obligation to update its CRD records.

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (SBSE-A)

(continuation)

PART II

1. Court Action initiated by: (Name of regulator, foreign financial regulatory authority, SRO, commodities exchange, agency, firm, private plaintiff, etc.)

2. Principal Relief Sought: (check appropriate item)

[ ] Cease and Desist
[ ] Civil Penalty(ies)/Fine(s)
[ ] Disgorgement
[ ] Injunction
[ ] Money Damages (Private/Civil Complaint)
[ ] Restitution
[ ] Restraining Order
[ ] Other _____

Other Relief Sought:

_____
_____
_____

3. Filing Date of Court Action (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

4. Principal Product Type: (check appropriate item)

[ ] Annuity(ies) - Fixed
[ ] Annuity(ies) - Variable
[ ] Banking Products (other than CD(s))
[ ] CD(s)
[ ] Commodity Option(s)
[ ] Debt – Asset Backed
[ ] Debt - Corporate
[ ] Debt - Government
[ ] Debt - Municipal
[ ] Derivative(s)
[ ] Direct Investment(s) – DPP & LP Interest(s)
[ ] Equity - OTC
[ ] Equity Listed (Common & Preferred Stock)
[ ] Futures - Commodity
[ ] Futures - Financial
[ ] Index Option(s)
[ ] Insurance
[ ] Investment Contract(s)
[ ] Money Market Fund(s)
[ ] Mutual Fund(s)
[ ] No Product
[ ] Options
[ ] Penny Stock(s)
[ ] Unit Investment Trust(s)
[ ] Other _____

Other Product Type:

5. Formal Action was brought in (include name of Federal, State or Foreign Court, Location of Court – City or County and State or Country, Docket/Case Number):

6. Control Affiliate Employing Firm when activity occurred which led to the civil judicial action (if applicable):

7. Describe the allegations related to this civil action. (The information must fit within the space provided.):

_____
_____
_____

8. Current Status? [ ] Pending [ ] On Appeal [ ] Final

9. If on appeal, action action appealed to (provide name of court): Date Appeal Filed (MM/DD/YYYY):

_____

10. If pending, date notice/process was served (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation:

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (SBSE-A)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved: (check appropriate item)

[ ] Consent [ ] Judgement Rendered [ ] Settled
[ ] Dismissed [ ] Opinion [ ] Withdrawn [ ] Other _____

12. Resolution Date (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation:

13. Resolution Detail

A. Were any of the following Sanctions Ordered or Relief Granted? (Check all appropriate items):

[ ] Monetary/Fine [ ] Revocation/Expulsion/Denial [ ] Disgorgement/Restitution
Amount $_____ [ ] Censure [ ] Cease and Desist/Injunction [ ] Bar [ ] Suspension

B. Other Sanctions:

C. Sanction Detail: If suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification, by exam/retraining was a condition of the sanction, provide length of time given to re-qualify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against prinicpal, date paid and if any portion of penalty was waived.

14. Provide a brief summary of details related to action(s), allegation(s), disposition(s), and/or finding(s) disclosed above. (The information must fit within the space provided.)

BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (SBSE-A)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (SBSE)] is an an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Questions I*** on Schedule C of Form SBSE;

Check **[√]** item(s) being responded to:

I In the past ten years has the *principal* ever been a securities firm or a *control affiliate* of a securities firm that:

[ ] (1) has been the subject of a bankruptcy petition?

[ ] (2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *principal* is an individual or organization registered through CRD, such *principal* need only complete Part I of the *applicant's* appropriate DRP (SBSE-A). Details of the event must be submitted on the *principal's* appropriate DRP (BD) or DRP (U-4). If a *principal* is an organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE-a). The completion of this DRP does not relieve the *prinicpal* of its obligation to update its CRD records.

PART I

A. If the *principal* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Principal*
CRD NUMBER

Registered: [ ] Yes [ ] No

[ ] This DRP should be removed from the SBS Entity's record because the principal is no longer associated with the SBS Entity.

B. If the *principal* is registered through the CRD, has the *principal* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *principal* of its obligation to update its CRD records.

PART II

1. Action Type: (check appropriate item)

[ ] Bankruptcy [ ] Declaration [ ] Receivership

[ ] Compromise [ ] Liquidated [ ] Other _____

2. Action Date (MM/DD/YYYY) _____ [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (SBSE-A)

(continuation)

3. If the financial action relates to an organization over which the *applicant* or the *control affiliate* exercise(d) *control*, enter organization name and the applicant's or control affiliate's position, title or relationship:

_____

Was the Organization investment-related? [ ] Yes [ ] No

4. Court action brought in (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country), Docket/Case Number and Bankruptcy Chapter Number (if Federal Bankruptcy Filing):

_____

5. Is action currently pending? [ ] Yes [ ] No

6. If not pending, provide Disposition Type: (check appropriate item)

[ ] Direct Payment Procedure [ ] Dismissed [ ] Satisfied/Released

[ ] Discharged [ ] Dissolved [ ] SIPA Trustee Appointed [ ] Other _____

7. Disposition Date (MM/DD/YYYY): _____ [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

8. Provide a brief summary of events leading to the action and if not discharged, explain. (The information must fit within the space provided.):

_____
_____
_____
_____
_____

9. If a SIPA trustee was appointed or a direct payment procedure was begun, enter the amount paid or agreed to be paid by you; or the name of the trustee:

Currently open? [ ] Yes [ ] No

Date Direct Payment Initiated/Filed or Trustee Appointed (MM/DD/YYYY): _____ [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

10. Provide details of any status/disposition. Include details of creditors, terms, conditions, amounts due and settlement schedule (if applicable). (The information must fit within the space provided.)

_____
_____
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Form SBSE-BD

OMB Approval
OMB Number: .....3235-____ Expires:..... ..Month __, 2014 Estimated average burden hours per response: . . . . . _____. per amendment: . . . . . _____.

Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants that are Registered Broker-dealers

FORM SBSE-BD INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. **FORM** - Form SBSE-BD is the Application for Registration as either a Security-based Swap Dealer or Major Security-based Swap Participant (collectively, "SBS Entities") by an entity that is registered or registering with the Commission as a broker or dealer. These SBS Entities must file this form to register with the Securities and Exchange Commission. An applicant must also file Schedules F and G, as appropriate. There are no Schedules A, B, C, D, or E.
2. **DEFINITIONS** – Form SBSE-BD uses the same definitions as in Form BD.
3. **ELECTRONIC FILING** - This Form SBSE-BD must be filed electronically with the Commission through the EDGAR system, and must utilize the EDGAR Filer Manual (as defined in 17 CFR 232. 11) to file and amend Form SBSE-BD electronically to assure the timely acceptance and processing of those filings.[188] Additional documents shall be attached to this electronic application.
4. **UPDATING** - By law, the *applicant* must promptly update Form SBSE-BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason [17 CFR 240.15Fb2-2]. In addition, the applicant must update any incomplete or inaccurate information contained on Form SBSE-BD prior to filing a notice of withdrawal from registration on Form SBSE-W [17 CFR 15Fb3-2(a)].
4. **FEDERAL INFORMATION LAW AND REQUIREMENTS -** 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 control number. Sections 15F, 17(a) and 23(a) of the Exchange Act authorize the SEC to collect the information on this form from registrants. See 15 U.S.C. §§78o-10, 78q and 78w. Filing of this form is mandatory. The principal purpose of this Form is to permit the Commission to determine whether the *applicant* meets the statutory requirements to engage in the security-based swap business. The Commission maintain[s] a file of the information on this form and will make certain information collected via the form publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

D. FILING INSTRUCTIONS

1. FORMAT

a. Items 1-4 and the accompanying Schedules must be answered and all fields requiring a response must be completed before the filing will be accepted.

b. *Applicant* must complete the execution screen certifying that Form SBSE-BD and amendments thereto have been executed properly and that the information contained therein is accurate and complete.

c. To amend information, the *applicant* must update the appropriate Form SBSE-BD screens.

d. A paper copy, with original signatures, of the initial Form SBSE-BD filing and Schedules must be retained by the *applicant* and be made available for inspection upon a regulatory request.

The mailing address for questions and correspondence is:

---

188 As discussed in the release proposing this Form, the Commission is currently developing a system to facilitate receipt of applications electronically. More specific instructions on how to file this Form may be included in the final version of the Form.

FORM SBSE-BD	Application for Registration as a Security-based Swap Dealer and Major Security-based Swap Participant that is Registered as a Broker-Dealer	Official Use	Official Use Only

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as an SBS Entity, would violate the Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

[ ] APPLICATION [ ] AMENDMENT

1. Exact name and CRD number of the *applicant:*
   - A. Full name of the *applicant*:
   - B. CRDNo.:
   - C Website/URL:
   - D. Contact Employee:
     Name: Title:
     Telephone Number: Email Address:
   - E. Chief Compliance Officer designated by the *applicant* in accordance with Exchange Act Section 15F(k):
     Name: Title:
     Telephone Number: Email Address:

2. A. The *applicant* is registering as a security-based swap dealer: [ ] Yes [ ] No
   B. The *applicant* is registering as a major security-based swap participant: [ ] Yes [ ] No
   Because it: (check all that apply)
   [ ] maintains a substantial security-based swap position
   [ ] has substantial counterparty exposure [ ] is highly leveraged relative to its capital position

3. A. The *applicant* is presently registered with the Commodity Futures Trading Commission as a:
   [ ] Swap Dealer [ ] Major Swap Participant
   B. The *applicant* is registering with the Commodity Futures Trading Commission as a:
   [ ] Swap Dealer [ ] Major Swap Participant

4. Is the *applicant* subject to regulation by a prudential regulator, as defined in Sec. 1a(39) of the Commodity Exchange Act.
   [ ] Yes [ ] No If "*yes*," identify the prudential regulator: _____.

Briefly describe the *applicant's* business: _____

EXECUTION:

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission in connection with the applicant's security-based swap activities, unless the applicant is a nonresident SBS Entity , may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Items 1E and 1F. If the applicant is a nonresident SBS Entity, it must complete Schedule F to designate a U.S. agent for service of process.

The undersigned certifies that he/she has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including schedules attached hereto, and other information filed herewith are current, true and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

Date (MM/DD/YYYY) Name of Applicant

By: Signature Name and Title of Person Signing on *Applicant's* behalf

This page must always be completed in full.

DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY

Schedule F of FORM SBSE **NONRESIDENT SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS**	*Applicant* Name: _____ Date:_____ Firm SEC No.: _____	**Official Use**

Each nonresident security-based swap dealer and non-resident security-based swap participant shall use Schedule F to identify its United States agent for service of process and the certify that it can

(5) provide the Commission with prompt access to its books and records, and

(6) submit to onsite inspection and examination by the Commission.

1. Service of Process:

A. Name of United States person *applicant* designates and appoints as agent for service of process

B. Address of United States person *applicant* designates and appoints as agent for service of process

The above identified agent for service of process may be served any process, pleadings, subpoenas, or other papers in

(a) any investigation or administrative proceeding conducted by the Commission that relates to the *applicant* or about which the *applicant* may have information; and

(b) any civil or criminal suit or action or proceeding brought against the *applicant* or to which the *applicant* has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of any of its territories or possessions or of the District of Columbia, to enforce the Exchange Act. The *applicant* has stipulated and agreed that any such suit, action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon the above-named Agent for Service of Process, and that service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

2. Certification regarding access to records:

Applicant can as a matter of law;

(5) provide the Commission with prompt access to its books and records, and

(6) submit to onsite inspection and examination by the Commission.

Applicant must attach to this Form SBSE a copy of the opinion of counsel it is required to obtain in accordance with paragraph (c)(2) or (c)(3) of Exchange Act Rule 15Fb2-4, as appropriate [paragraphs (c)(2) or (c)(3) of 17 CFR 240.15Fb2-4].

Signature:

Name and Title:

Date:

Schedule G of FORM SBSE-BD **CERTIFICATION ON STATUTORY DISQUALIFICATION**	*Applicant* Name: _____ Date:_____ Firm SEC No.: _____	**Official Use**

Use Schedule G to certify that none of the *applicant's* associated persons is subject to statutory disqualification (as that term is defined in Section 3(a)(39) of the Exchange Act [15 U.S.C. 78c(a)(39)].

Instructions: This certification must be signed by the *applicant's* Chief Compliance Officer designated pursuant to Exchange Act Section 15F(k) or by his or her designee.

For purposes of this Form, the term *associated person* shall have the meaning as specified in Section 3(a)(70) of the Exchange Act [15 U.S.C. 78c(a)(70)].

This is a: [ ] CERTIFICATION [ ] RE-CERTIFICATION

The *applicant* certifies that it has

(e) performed background checks on all of its *associated persons* who effect or are involved in effecting, or who will effect or be involved in effecting, security-based swaps on its behalf, and

(f) determined that no *associated person* who effects or is involved in effecting, or who will effect or be involved in effecting, security-based swaps on its behalf is subject to statutory disqualification, as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(39)].

Applicant Name:	Date:
Signature of Chief Compliance Officer or Designee:	
Name of Chief Compliance Officer or Designee:	If Designee, Title of Designee:

Form SBSE-C

OMB Approval
OMB Number: .....3235-____ Expires:..... ..Month __, 2014 Estimated average burden hours per response: . . . . . _____. per amendment: . . . . . _____.

Certification for Registration of Security-based Swap Dealers and Major Security-based Swap Participants

FORM SBSE-C INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Each security-based swap dealer and major security-based swap participant must file Form SBSE-C to apply for ongoing registration.
2. **ELECTRONIC FILING** – The applicant must file Form SBSE-C through the EDGAR system, and must utilize the EDGAR Filer Manual (as defined in 17 CFR 232. 11) to file and amend Form SBSE-C electronically to assure the timely acceptance and processing of those filings.[189]
3. All fields requiring a response must be complete before the filing is accepted.

The mailing address for questions and correspondence is:

FEDERAL INFORMATION LAW AND REQUIREMENTS – SEC's Collection of Information

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 control number. Sections 15F, 17(a) and 23(a) of the Exchange Act authorize the SEC to collect the information on this form from registrants. See 15 U.S.C. §§78o, 78o-4, 78o-5, 78q and 78w. Filing of this Form is mandatory. The principal purpose of this Form is to permit the Commission to determine whether it is in the public interest to approve or disapprove the application for ongoing registration by the security-based swap dealer or major security-based swap participant. The Commission maintains a file of the information on this Form and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this Form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

[189] As discussed in the release proposing this Form, the Commission is currently developing a system to facilitate receipt of applications electronically. More specific instructions on how to file this Form may be included in the final version of the Form.

FORM SBSE-C	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	Official Use

Instructions: This certification must be signed by a knowledgeable senior officer of the *applicant*.

I certify that, after due inquiry, I have reasonably determined that the applicant -

(1) has the operational, financial, and compliance capabilities to act as a security-based swap dealer or major security-based swap participant, as applicable, and

(2) I have documented the process by which I reached such determination.

Applicant Name:	Date:
Signature of Knowledgeable Senior Officer:	Name of Knowledgeable Senior Officer:
	Title of Knowledgeable Senior Officer

Form SBSE-W

OMB Approval
OMB Number: .....3235-___ Expires:..... ..Month __, 2014 Estimated average burden hours per response: . . . . . _____. per amendment: . . . . . _____.

Request for Withdrawal from Registration as a Security-based Swap Dealer or Major Security-based Swap Participant

FORM SBSE-W INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Security-based swap dealers and major security-based swap participants (collectively "SBS Entities") must file Form SBSE-W to withdraw their registration from the Securities and Exchange Commission ("SEC").
2. All questions must be answered and all fields requiring a response must be complete before the filing is accepted.
3. File Form SBSE-W with the SEC electronically.[190] Prior to filing Form SBSE-W, amend Form SBSE, Form SBSE-A, or Form SBSE-BD, as applicable, to update any incomplete or inaccurate information.
4. A paper copy of this Form SBSE-W with the original manual signature(s) must be retained by the security-based swap dealer or major security-based swap participant filing the Form SBSE-W and be made available for inspection upon a regulatory request. A paper copy of the initial Form SBSE, Form SBSE-A, or Form SBSE-BD filing, as appropriate, and amendments to any Disclosure Reporting Pages (DRPs) also must be retained by the security-based swap dealer and major security-based swap participant filing the Form SBSE-W.

The mailing address for questions and correspondence is:

EXPLANATION OF TERMS

(The following terms are italicized throughout this form.)

The term **INVESTIGATION** includes: (a) grand jury investigations, (b) U.S. Securities and Exchange Commission investigations after the "Wells" notice has been given, (c) formal investigations by a self-regulatory organization or, (d) actions or procedures designated as investigations by jurisdictions. The term investigation does not include subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations.

The term **INVESTMENT-RELATED** pertains to securities, commodities, banking, savings association activities, credit union activities, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, savings association, credit union, insurance company, or insurance agency).

FEDERAL INFORMATION LAW AND REQUIREMENTS – SEC's Colllection of Information

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 control number. Sections 15F, 17(a) and 23(a) of the Exchange Act authorize the SEC to collect the information on this form from registrants. See 15 U.S.C. §§78o, 78o-4, 78o-5, 78q and 78w. Filing of this Form is mandatory. The principal purpose of this Form is to permit the Commission to determine whether whether it is in the public interest to permit the security-based swap dealer or major security-based swap participant to withdraw its registration. The Commission maintain a file of the information on this Form and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

190 As discussed in the release proposing this Form, the Commission is currently developing a system to facilitate receipt of applications electronically. More specific instructions on how to file this Form may be included in the final version of the Form.

FORM SBSE-W	Request for Withdrawal from Registration as a Security-based Swap Dealer or Major Security-based Swap Participant	Official Use

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

NOTE: Prior to filing a notice of withdrawal from registration on Form SBSE-W, an entity must update any incomplete or inaccurate information contained on Form SBSE, Form SBSE-A, or Form SBSE-BD, as appropriate [17 CFR 15Fb3-2(a)].

1. A. Full name of Security-based Swap Dealer or Major Security-based Swap Participant: B. IRS Emp. Ident. No.:
   C. Name under which business is conducted, if different: D. Firm SEC, NFA, and/or CRD No.:
   E. Firm main address: Number and Street City State/Country Zip+4/Postal Code
   F. Mailing address, if different: Number and Street City G. Area Code / Telephone No.:

2. Withdrawing from Registration as a: [ ] Security-based Swap Dealer [ ] Major Security-based Swap Participant

3. Date firm ceased business: MM / DD / YY

4. Reason security-based swap dealer or major security-based swap participant is seeking to withdraw from SEC registration:

[ ] Winding down all business
[ ] No longer doing security-based swap business in U.S.
[ ] Have effected less security-based swap business for previous four quarters and no longer fit definition of major security-based swap participant
[ ] Ceasing business as a security-based swap dealer
[ ] Ceasing business as a major security-based swap participant
[ ] Other (describe): _____

5. Does the security-based swap dealer or major security-based swap participant hold any segregated counterparty collateral? Yes [ ] No [ ]
   A. Number of counterparties whose collateral is held:
   B. Amount of money held as collateral: $
   C. Market value of securities held as collateral: $
   D. Describe arrangements made for return of collateral: _____

6. Is the security-based swap dealer or major security-based swap participant now the subject of or named in any investment-related:

	yes	no
- investigation	[ ]	[ ]
- customer-initiated complaint	[ ]	[ ]
- private civil litigation	[ ]	[ ]

7. Name and Address of the Person who will have Custody of Books and Records: Area Code / Telephone No.:
   Address where the Books and Records will be Located, if Different: Number and Street City State/Country ZIP + 4/Postal Code

EXECUTION: The undersigned certifies that he/she has executed this form on behalf of, and with the authority of, the security-based swap dealer or security-based swap participant, and that all information herein, including any attachments hereto, is accurate, complete, and current. The undersigned and security-based swap dealer or major security-based swap participant further certify that all the information previously submitted on Form SBSE, Form SBSE-A, or Form SBSE-BD, as appropriate, is accurate and complete as of this date, and that the security-based swap dealer's or major security-based swap participant's books and records will be preserved and available for inspection as required by law.

Date (MM/DD/YYYY) Name

By: Signature Print Name and Title

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