



SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0717]

Agency Information Collection Activities; Submission for OMB Review; Comment

Request; Extension: Exchange Act Rule 3a71-3

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 *et seq.*), the Securities and Exchange Commission (SEC or "Commission") is submitting to the Office of Management and Budget (OMB) this request for an extension of the proposed collection of information.

The representations contemplated by Rule 3a71-3 will be relied upon by counterparties to determine whether such transaction is a “transaction conducted through a foreign branch” of a U.S. bank counterparty, as defined in Rule 3a71-3(a)(3)(i), as well as to verify whether a security-based swap counterparty is a “U.S. person.” Counterparties to security-based swap transactions may voluntarily give such representations to one another to reduce operational costs and allow each party to ascertain whether such transaction is subject to certain Title VII requirements. Because any representations provided to counterparties under Rule 3a71-3 will constitute voluntary third-party disclosures, the Commission will not typically receive these disclosures.

The Commission believes that the representations contemplated by Rule 3a71-3 will, in most cases, be made through representation letters or amendments to the parties’ existing trading documentation (e.g., the schedule to a master agreement). The Commission believes that, because trading relationship documentation is established between two counterparties, whether a counterparty is able to represent that it is entering into a “transaction conducted through a foreign branch” or that it does not meet the criteria of the “U.S. person” definition will not change with

each transaction and, therefore, such representations generally need only be made once per relationship, as opposed to on a transaction-by-transaction basis.. The Commission anticipates that counterparties may elect to develop and incorporate these representations in trading documentation following the effective date of the Commission’s security-based swap regulations or prior to entering into in-scope transactions. In either case, the regulatorily-compliant language would be incorporated on a relationship basis, as opposed to on a transactional basis. In 2022, the Commission anticipated that standardized language would be developed by individual respondents or through a combination of trade associations and industry working groups and that it would be applied across all of an entity’s security-based swap trading relationships.¹

a. Representations regarding a “transaction conducted through a foreign branch”

Pursuant to Rule 3a71-3, parties to security-based swaps are permitted to rely on certain representations from their counterparties when determining whether a transaction falls within the definition of a “transaction conducted through a foreign branch.” Based on its understanding of the current state of the security-based swap market, the Commission staff estimates that nine entities will incur burdens under this collection of information, whether solely in connection with the business conduct requirements or also in connection with the application of the de minimis exception.

In 2022, the Commission estimated the one-time third-party disclosure burden associated with developing representations under this collection of information to be, for each U.S. bank counterparty that would make such representations, no more than five hours, and up to \$2,000 for the services of outside professionals. Across the nine respondents, this amounted to approximately 45 hours, or 15 hours per year when annualized over three years.

¹ It is the Commission’s understanding that the ISDA U.S. Self-Disclosure Letter is one such example of the anticipated standardized language that the industry has developed. However, the Commission lacks information regarding the scope of reliance upon this representation letter and thus hesitates to presume that standardization has been fully achieved.

The number of U.S. banks that are registered as security-based swap dealers has not changed since 2022. The Commission believes that the majority of the burden associated with the new disclosure requirements was experienced during the first year as language was being developed and trading documentation was being amended.

For PRA purposes, in 2022, the Commission assumed that all nine respondents would seek outside counsel to assist in developing the representations contemplated by Rule 3a71-3 and that they would, on average, consult with outside counsel for up to five hours. The Commission further assumed that the services of outside counsel would be sought for the first year only and that none of the nine respondents would seek outside legal services for year two or year three. In 2022, the Commission estimated the cost for each respondent who incurred this initial burden to be up to \$2,000. Over the three-year period, this amounted to \$18,000, or \$6,000 per year when annualized over three years.

The Commission believes that this initial burden is no longer applicable to these entities. However, the Commission believes that there is an ongoing third-party disclosure burden associated with these requirements. The Commission further believes that the ongoing burden associated with this requirement will be 10 hours per U.S. bank counterparty for verifying representations with existing counterparties, for a total of approximately 90 hours across the nine respondents.²

b. Representations regarding U.S.-person status

Pursuant to Rule 3a71-3(a)(4)(iv), persons may rely on representations from a counterparty that the counterparty does not satisfy the criteria defining U.S. person set forth in Rule 3a71-3(a)(4)(i), unless such person knows or has reason to know that the representation is not accurate. Commission staff estimates, based on current security-based swap data repository

² The Commission staff estimates that this burden will consist of 10 hours of in-house counsel time for each security-based swap market participant that will make such representations. See Business Conduct Adopting Release, 81 FR 30097 n.1581.

(“SBSDR”) reporting³ and its understanding of OTC derivatives markets, including the domiciles of counterparties that are active in the market, that approximately 4,200 entities will provide representations that they do not meet the criteria necessary to be U.S. persons.

In 2022, the Commission estimated that 3,000 non-U.S. persons were active in the security-based swap market. As with representations regarding whether a transaction is conducted through a foreign branch, the Commission estimated the maximum total third-party disclosure burden associated with developing new representations to be, for each counterparty that will make such representations, no more than five hours and up to \$2,000 for the services of outside professionals. Across the 3,000 respondents, this amounted to a maximum of approximately 15,000 hours, or 5,000 hours per year when annualized over three years.

The Commission’s current estimate of the number of persons who would be making non-U.S. person status disclosures is 4,200 persons, which is 1,200 more than the estimate in 2022. The Commission lacks visibility into exactly how many of the 4,200 persons are new entrant counterparties into the security-based swap market (and thus likely to incur the initial burden associated with compliance) versus counterparties who were present in the market in 2022 and already incurred the burden. Thus, the Commission will assume that all of the 4,200 non-U.S. persons will incur the initial disclosure burden.

The Commission continues to believe that the maximum total third-party disclosure burden will be no more than five hours. The current cost of employing the services of outside professionals is estimated to be approximately \$2,715 (five hours at \$543 per hour).⁴ As the Commission’s current estimate of non-U.S. persons who would be making such representations is 4,200 persons, the approximate number of hours would total approximately 21,000 hours (five

³ The estimate is as of December 31, 2024 and is based upon security-based swap position data derived by each SBSDR from the transaction reports made to the SBSDR.

⁴ See Business Conduct Adopting Release, 81 FR 30096 n.1577 (estimating a cost of \$400 per hour for outside legal services). The Commission’s current estimated hourly rate for outside legal services, reflecting adjustments for inflation, is \$543.

hours for each) or 7,000 hours per year when annualized over three years. This estimate assumes little or no reliance on standardized disclosure language.

The Commission expects that most of the burden associated with the disclosure requirements will be experienced during the first year as language is developed and trading documentation is amended. After the new representations are developed and incorporated into trading documentation, the Commission believes that the annual third-party disclosure burden associated with this requirement will be no more than approximately 10 hours per counterparty for verifying representations with existing counterparties and onboarding new counterparties. In 2022, across the 3,000 respondents, this amounted to a maximum of approximately 30,000 hours. The Commission's current estimate, across 4,200 counterparties, is 42,000 hours.

The Commission believes that some of the entities that comply with Rule 3a71-3 will seek outside counsel to help them develop new representations. For PRA purposes, the Commission assumes that all 4,200 respondents will seek outside legal services for the first year only and will, on average, consult with outside counsel for up to five hours. The Commission also assumes that none of those 4,200 respondents will seek outside legal services for year two or year three. In 2022, the Commission estimated the aggregate cost for 3,000 respondents over the three-year period to be \$6 million, or \$2 million per year when annualized over three years; the total labor cost per respondent was estimated to be approximately \$666.67 when annualized over three years. The Commission's current estimate of the annualized labor cost per respondent is \$905 (\$2,715 spread across three years). The Commission's current estimate for the 4,200 respondents is \$11.4 million or \$3.8 million per year when annualized over three years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202512-3235-003 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after

publication of this notice, by **[INSERT DATE 31 DAYS AFTER DATE OF PUBLICATION
IN THE FEDERAL REGISTER]**.

Dated: February 27, 2026.

Sherry R. Haywood,

Assistant Secretary.

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