

SEC Proposes Recordkeeping, Reporting and Notification Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants

May 16, 2014

Contents

Introduction.....	1
Record Creation	2
Record Preservation.....	3
Reporting.....	3
<i>Form SBS</i>	4
<i>Annual Financial Reports</i>	4
Notification Requirements.....	5
Quarterly Securities Count and Related Capital Charge.....	6
Appendix A	7
Summary of Proposed Recordkeeping Requirements for SBSDs.....	7
Appendix B	10
Summary of Proposed Reporting Requirements for SBSDs.....	10
Appendix C	12
Summary of Proposed Notification Requirements for SBSDs.....	12

Introduction

The Securities and Exchange Commission (“**SEC**”) recently issued a **proposal** to establish a framework of recordkeeping, reporting and notification requirements for security-based swap dealers (“**SBSDs**”) and major security-based swap participants (“**MSBSPs**”). The proposal would also expand the recordkeeping, reporting and notification requirements that currently apply to broker-dealers to cover their security-based swap (“**SBS**”) activities. This is the first proposed rulemaking related to SBS since the SEC released its **proposal** for cross-border SBS activities in May of last year.

The proposal would prescribe parallel, but not identical, obligations for three different categories of SBSDs: (1) SBSDs that are also registered as broker-dealers (“**BD-SBSDs**”); (2) U.S. and foreign banks that register as SBSDs (“**Bank SBSDs**”); and (3) SBSDs that are neither broker-dealers nor banks (“**Stand-Alone SBSDs**”). A similar approach is taken for MSBSPs; however, this memorandum will not address requirements applicable to MSBSPs.

Broadly speaking, BD-SBSDs would be required to comply with the same general recordkeeping and reporting requirements that already apply to broker-dealers, with certain enhancements and modifications to reflect the specific properties of SBS and requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”). Although Bank SBSDs would be subject to similar duties, the SEC’s proposal contains somewhat less extensive requirements for this category of SBSD. This reflects the fact that, with respect to capital and margin, Bank SBSDs will be regulated by prudential regulators, and not the SEC, as well as that the Dodd-Frank Act contains statutory language limiting the scope of SEC regulation over Bank SBSDs to their SBS activities. The proposed requirements for Stand-Alone SBSDs acknowledge the more limited activities expected to be engaged in by such entities, as compared with BD-SBSDs (*i.e.*, because Stand-Alone SBSDs will not be permitted to act as securities brokers or as dealers in securities other than SBS, unless they also register with the SEC as broker-dealers).

Significantly, the proposal presumes that the SEC’s proposed substantive requirements concerning capital, margin and customer protection, trade reporting and external business conduct will be adopted as proposed and includes record creation and retention and reporting requirements that dovetail with these proposed substantive rules.

The deadline for submitting comment on the proposal is July 1, 2014.

Record Creation

Broker-dealers, including BD-SBSDs, would continue to be subject to the requirements of Exchange Act Rule 17a-3, although with certain modifications to also account for their SBS activities. Required records would include, among other things:

- daily records of all of their purchases and sales of SBS and related cash and forward positions in their trade blotters (including specified items of information);
- SBS positions;
- a memorandum of each brokerage order for the purchase or sale of an SBS and for the purchase and sale of proprietary SBS orders;
- copies of trade acknowledgments and verifications of SBS made for purposes of the SEC's separately proposed confirmation and documentation requirements for SBSDs (as well as unverified trade acknowledgments);
- certain information with respect to SBS accounts, including records of unique counterparty identifiers, the names and addresses of counterparties and the signature of each person who is authorized to transact business in an SBS account;
- records of compliance with the possession or control requirement under the SEC's separately proposed SBS customer protection requirements;
- records of reserve computations for purposes of the SEC's separately proposed SBS customer reserve account requirements;
- information required to be reported under the SEC's proposed trade reporting rule;
- records regarding compliance with the SEC's proposed external business conduct standards; and
- records of liquidity stress tests that are proposed to be required for those SBSDs that are approved to use internal models for calculating certain capital charges in lieu of standardized haircuts.

Many of these proposed requirements would also apply to Bank SBSDs and Stand-Alone SBSDs. However, some of the proposed recordkeeping requirements would apply to certain categories of SBSDs, but not others. See Appendix A for a list of the recordkeeping requirements that would apply to each type of SBSD.

Some of the proposed requirements would be new to Bank SBSDs. For example, while most of the proposed requirements that would apply to Bank SBSDs would be limited to records relating to the Bank SBSD's SBS activities, and not to other activities of the bank, the proposal requires Bank SBSDs to obtain and keep a questionnaire that is executed by each associated person of the Bank SBSD whose activities relate to the Bank SBSD's SBS activities and that contains information similar to that in Form U4, which is currently used by broker-dealers and their associated persons but not banks.

Record Preservation

Under current Exchange Rule 17a-4, broker-dealers are required to preserve different categories of records, with varying periods attaching to each category of record. The SEC proposes to extend these requirements to BD-SBSDs, with certain modifications to reflect SBS activities and the proposed amendments to Rule 17a-3. The proposal would impose generally analogous record preservation requirements to Stand-Alone SBSBs and Bank SBSBs. The proposed record preservation requirements that would be applicable to each category of SBSB are set forth in Appendix A.

There are several noteworthy points concerning this aspect of the proposal. For example:

- The proposal would require SBSBs to keep and maintain records of copies of their communications and written agreements that relate to their “business as such.” This proposed requirement would cover an extraordinarily broad amount of materials, including, among other things, interoffice memoranda, as well as an SBSB’s “communications,” which the SEC has interpreted to include both emails and instant messages. For these purposes, the SEC is proposing to include within the definition of “communications” both sales scripts and telephone calls that the SBSB chooses to record.
- The SEC has separately proposed to require nonbank SBSBs to comply with Exchange Act Rule 15c3-4, which, very broadly, requires OTC derivatives dealers and broker-dealers that use the alternative net capital method and compute certain risk charges using internal models, rather than standardized “haircuts” (“**ANC broker-dealers**”), to establish, document and maintain systems of internal risk management controls to assist in managing the risks associated with the firm’s business activities and various risks. The SEC is proposing to require non-Bank SBSBs to preserve the same types of records relating to their compliance with Rule 15c3-4 as required of ANC broker-dealers and OTC derivatives dealers.
- Current Rule 17a-4 contains special provisions that apply when a broker-dealer uses a third party to prepare or maintain its records. In particular, any such third parties must file a written undertaking with the SEC, which must be signed by a duly authorized person and state that such records are the property of the broker-dealer, may be examined by the SEC and will be surrendered promptly to the SEC upon request. The SEC proposes a parallel requirement that would apply to Stand-Alone SBSBs and Bank SBSBs. This proposed requirement could create challenges for non-U.S. Bank SBSBs that use local third-party vendors to help maintain records, since some foreign vendors may be unable or unwilling to provide such written undertakings.

Extraterritorial Application

There are uncertainties regarding the application of the proposed recordkeeping and reporting rules to non-U.S. SBSBs (and foreign branches of U.S. banks).

The SEC’s cross-border [proposal](#), issued in May of 2013, preliminarily treated recordkeeping as an entity-level requirement, though the proposal did not explicitly discuss in the extraterritorial context the recordkeeping and reporting requirements under Section 15F of the Exchange Act, which are the subject of this client memorandum.

The SEC’s cross-border proposal would allow SBS market participants to satisfy some U.S. SBS regulations by complying with foreign regulatory requirements if the SEC determines that substituted compliance is available.

For more information on the SEC’s cross-border proposal, see our Davis Polk client [memorandum](#).

Reporting

The proposed reporting rules relate to an SBSB’s financial condition, rather than the reporting of specific SBSB transactions, which were proposed as Regulation SBSR.

As with the recordkeeping requirements, the proposed SBSD reporting requirements are modeled on existing broker-dealer rules. The current Exchange Act Rule 17a-5 regime applicable to broker-dealers has two major components: (1) periodic unaudited reports regarding a broker-dealer’s financial and operating condition (“**FOCUS Reports**”), and (2) annual financial statements and reports prepared by an independent public accountant regulated by the Public Company Accounting Oversight Board (“**PCAOB**”). The proposed rules would amend Rule 17a-5 to expand its scope to apply to BD-SBSDs, and adopt Rule 18a-7 to apply certain parallel requirements to Stand-Alone SBSDs and Bank SBSDs. Again recognizing the role of bank regulators in oversight of Bank SBSDs, the SEC proposed to allow Bank SBSDs to use the same information that they already file with prudential regulators to a large extent.

Form SBS

Form SBS, which is provided in proposed form at the back of the proposal, must be filed by all SBSDs. For BD-SBSDs, Form SBS will replace Part II or (as applicable) Part IIA of the FOCUS report they are currently required to file. Form SBS would need to be filed by the BD-SBSD on a monthly basis, even if the broker-dealer would otherwise only be required to file quarterly FOCUS Reports.

Form SBS—Part 4

Part 4 of Form SBS would require BD-SBSDs and Stand-Alone SBSDs to provide extensive information regarding their swap and SBS positions, counterparties, and exposures. This includes aggregate derivatives exposures grouped by internal credit rating and by country, and detail on the 15 counterparties to which the firm has the largest net and total exposure. This section is likely to require information of a type, and sorted in ways, that firms may not be compiling today.

Stand-Alone SBSDs and Bank SBSDs will also be required to file Form SBS. However, the information requested in the form is tailored to the type of SBSD. For BD-SBSDs, the form is designed to capture broker-dealer and SBSD activity; for Stand-Alone SBSDs, it is largely designed to capture SBSD activity; and for Bank SBSDs, it is designed to capture information already provided to prudential regulators in the bank’s call reports. Similarly, although Stand-Alone BD-SBSDs will be required to file Form SBS on a monthly basis, within 17 business days following the end of the month, Bank SBSDs would only file within 17 business days after quarter-end, as they generally file call reports only quarterly.

Form SBS has five parts, and SBSDs are required to fill out differing parts depending on their status as a BD-SBSD, Bank SBSD, Stand-Alone SBSD and/or SBSD dually registered as a futures commission merchant (“**FCM**”) with the Commodity Futures Trading Commission. Significantly less information would be required from Bank SBSDs than others, with much of the financial information being derived from filings submitted to banking regulators. Appendix B contains a summary of each part of Form SBS and describes which part will apply to which type of SBSD.

Annual Financial Reports

Proposed Rule 18a-7 would generally extend the annual financial reporting requirements for broker-dealers under current Rule 17a-5 (which the SEC proposes to amend to reflect SBS activities) to Stand-Alone SBSDs. However, as Stand-Alone SBSDs are not broker-dealers, they would not be required to file Form Custody reports or reports with the Securities Investor Protection Corporation (“**SIPC**”). The annual financial reporting requirement would not apply to Bank SBSDs.

Required reports for Stand-Alone SBSDs, as for broker-dealers, must be compiled in accordance with U.S. Generally Accepted Accounting

Principles (“GAAP”). In addition, similar to broker-dealers not claiming an exemption from Rule 15c3-3, Stand-Alone SBSBs would be required to include a compliance report that must contain statements as to whether the SBSB established and maintained internal control over compliance with certain financial responsibility rules.

Confidential Treatment

As with broker-dealer filings, the annual report itself is not confidential, but firms may request confidential treatment of all portions of the annual report other than the statement of financial condition. However, if there are material weaknesses, the accountant’s report on the compliance report would generally not be deemed confidential.

Like broker-dealers, Stand-Alone SBSBs will need to engage PCAOB-registered independent public accountants for purposes of the financial reports and the compliance report and will be required to file specified notices with the SEC regarding the engagement and termination of such accountants. In addition, like broker-dealers, Stand-Alone SBSBs would be required to submit reports prepared by their independent public accountant covering both the financial report and the compliance report. These reports must be filed within 60 calendar days of fiscal year end.

Mirroring to a large extent existing requirements for all broker-dealers, Stand-Alone SBSBs, but not Bank SBSBs, will be required to disclose on their website an audited statement of financial condition prepared in accordance with U.S. GAAP, a statement regarding the firm’s net capital, and a report of any material weaknesses as identified by their independent public accountants, if applicable, within 10 business days after filing their annual reports with the SEC. Stand-Alone SBSBs will also need to make a website disclosure of their unaudited semi-annual statements within 30 days of the filing of the unaudited statements. Unlike broker-dealers, however, Stand-Alone SBSBs only need to provide a physical copy of the statements if requested by the customer.

Notification Requirements

Proposed Rule 18a-8 would require SBSBs to notify the SEC upon the occurrence of certain specified events regarding their financial condition, customer protection and net capital, including providing an “early warning notice” at certain levels. These notification requirements, summarized in Appendix C, are modeled on those that apply to broker-dealers under Rule 17a-11—which would continue to apply to BD-SBSBs, subject in each case to certain modifications.

In addition, as with broker-dealers, Stand-Alone SBSBs will be required to notify the SEC in the event that the SBSB discovers, or is informed by its independent public accountants of, material weakness in its internal control over compliance. The SBSB must notify the SEC within 24 hours of discovery of the material weakness, and within 48 hours, report what the SBSB has done or is doing to correct the situation.

The SEC has also proposed a new requirement under 17a-11 for alternative net capital BD-SBSBs (“**ANC BD-SBSBs**”) and a parallel requirement for Stand-Alone SBSBs authorized to calculate their net capital using internal models (“**Stand-Alone ANC SBSBs**”) (collectively, “**ANC SBSBs**”). The SEC has proposed that these SBSBs be subject to monthly liquidity stress tests and liquidity reserve requirements. To supplement these requirements, the SEC is proposing to require notification if the stress tests indicate that the firm’s liquidity reserve is insufficient. These firms would also be required to provide an early warning notice if specified issues arise in connection with the SBSB’s internal models, such as the

occurrence of the fourth backtesting exception, and each subsequent backtesting exception, under the SBSB's applicable net capital rule.

Bank SBSBs are excluded from most of the notification requirements contained in the proposed rule. The few notification requirements for Bank SBSBs are intended to piggyback on existing U.S. bank regulatory requirements. For example, Bank SBSBs would need to notify the SEC when they notify their prudential regulator of an adjustment in their capital category from one category (such as well capitalized) to another (such as adequately capitalized).

All SBSBs would be required to notify the SEC if they fail to make and keep current books and records required by certain SEC rules, or make required deposits into their customer reserve account.

Quarterly Securities Count and Related Capital Charge

Finally, the proposed rules would require Stand-Alone SBSBs to conduct quarterly securities counts, modeled on those currently required of many broker-dealers under Rule 17a-13, which would continue to apply to BD-SBSBs. Under the proposal, the Stand-Alone SBSB would be required to maintain records showing what securities it should have in its possession or control and those that it does have. The Stand-Alone SBSB would also be obliged to reconcile those differences within seven business days and must take a capital charge to the extent that the differences are not reconciled. The proposed rule would also impose a separation of duties requirement: the count must be conducted by someone who does not regularly have direct responsibility over the securities. The proposed rule does not say how a BD-SBSB or Stand-Alone SBSB is supposed to discharge its securities reconciliation duties with respect to SBS and asks for comment on this question.

Any U.S. federal tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, to avoid penalties under the Internal Revenue Code or to promote, market or recommend any transaction or matter addressed herein.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

Annette L. Nazareth
202 962 7075
annette.nazareth@davispolk.com

Lanny A. Schwartz
212 450 4174
lanny.schwartz@davispolk.com

Jeffrey T. Dinwoodie
202 962 7132
jeffrey.dinwoodie@davispolk.com

Scott D. Farbish
212 450 4737
scott.farbish@davispolk.com

Jai R. Massari
202 962 7062
jai.massari@davispolk.com

Gabriel D. Rosenberg
212 450 4537
gabriel.rosenberg@davispolk.com

Hilary S. Seo
212 450 4178
hilary.seo@davispolk.com

Zachary J. Zweihorn
202 962 7136
zachary.zweihorn@davispolk.com

© 2014 Davis Polk & Wardwell LLP | 450 Lexington Avenue | New York, NY 10017

Notice: This publication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. If you have received this email in error, please notify the sender immediately and destroy the original message, any attachments thereto and all copies. Refer to the firm's [privacy policy](#) located at davispolk.com for important information on this policy. Please consider adding Davis Polk to your Safe Senders list or adding dpwmail@davispolk.com to your address book.

Unsubscribe: If you would rather not receive these publications, please respond to this email and indicate that you would like to be removed from our distribution list.

Appendix A

Summary of Proposed Recordkeeping Requirements for SBSDs

Record Required	Broker-Dealer SBSDs	Stand-Alone SBSDs	Bank SBSDs	Comments
Records to be preserved for a period of not less than 6 years, the first two years in an easily accessible place				
Trade Blotters	Yes	Yes	Yes, but only with respect to SBS activities	For SBS, records must show, for each purchase or sale: the type of SBS; the reference security, index, or obligor; the date and time of execution; the effective date; the termination or maturity date; the notional amount; the unique transaction identifier and the unique counterparty identifier.
General Ledgers	Yes	Yes	No	
Ledgers for Customer and Non-Customer Accounts	Yes	Yes	Yes, but only with respect to securities and commodities transactions relating to their SBS customers and non-customers	
Stock Records	Yes	Yes	Yes, but only with respect to positions related to their business as an SBSD	
Records to be preserved for a period of not less than 3 years, the first two years in an easily accessible place				
Memoranda of Brokerage Orders	Yes	No	Yes, but only with respect to SBS	
Memoranda of Proprietary Orders	Yes	Yes, but only with respect to SBS	Yes, but only with respect to SBS	
Confirmations	Yes	Yes	Yes, but only if related to their business as an SBSD	
SBS Accountholder Information	Yes	Yes	Yes	This would require a record of the unique counterparty identifier, the name and address of such counterparty, and the signature of each person authorized to transact business in the SBS account.
Options Positions	Yes	Yes	No	
Trial Balances and Computation of Net Capital	Yes	Yes	No	
Associated Person's Questionnaire or Employment Application	Yes	Yes	Yes, but only for persons whose activities relate to their business as an SBSD	

Record Required	Broker-Dealer SBSBs	Stand-Alone SBSBs	Bank SBSBs	Comments
Liquidity Stress Test	Yes	Yes	No	This recordkeeping requirement would only apply to ANC SBSBs.
Equity and Margin Calculations for SBS Accounts	Yes	Yes	No	
Compliance with Possession or Control Requirements for SBS	Yes	Yes	Yes	This requirement relates to the SEC's proposed Capital and Margin rule for SBSBs under Rule 18a-4 (here).
Customer Reserve Requirements for SBS	Yes	Yes	Yes	This requirement relates to the SEC's proposed Capital and Margin rule for SBSBs under Rule 18a-4 (here).
SBS Transactions Unverified within Five Business Days	Yes	Yes	Yes	The five-day threshold for the proposed recordkeeping requirement does not impose a maximum time frame within which SBS must be verified under proposed Rule 15Fi-1. This provision only requires that transactions unverified within that time frame must be recorded.
Compliance with SBS Business Conduct Standards Relating to Political Contributions	Yes	Yes	Yes	In the SEC's proposed cross-border release, the SEC stated that it preliminarily believes that many of the external business conduct standards would not apply to foreign SBSBs with respect to their SBS transactions conducted outside the U.S. with non-U.S. persons (or with foreign branches of U.S. banks).
Compliance with other SBS External Business Conduct Standards	Yes	Yes	Yes	In the SEC's proposed cross-border release, the SEC stated that it preliminarily believes that many of the external business conduct standards would not apply to foreign SBSBs with respect to their SBS transactions conducted outside the U.S. with non-U.S. persons (or with foreign branches of U.S. banks).
Bank Records	Yes	Yes	No	
Bills	Yes	Yes	No	
Communications Relating to its Business as Such	Yes	Yes	Yes, but only with respect to communications relating to their business as an SBSB	The term "communications" would include, among other things, recordings of telephone calls required to be maintained pursuant to the daily trading records provision in Exchange Act Section 15F(g)(1).
Trial Balances	Yes	Yes	No	
SBS Account Documents	Yes	Yes	Yes	These account documents would include guarantees of SBS accounts, powers of attorney and other evidence granting discretionary authority in respect of an SBS account, and copies of resolutions empowering an agent to act on behalf of a corporation.

Record Required	Broker-Dealer SBSDs	Stand-Alone SBSDs	Bank SBSDs	Comments
Written Agreements Relating to its Business as Such	Yes	Yes	Yes, but only with respect to written agreements relating to their business as an SBSD	Written agreements with respect to an SBS customer or non-customer, including governing documents or any document establishing the terms and conditions of the customer's or non-customer's SBS, would need to be maintained with the customer's or non-customer's account records.
Information Supporting Financial Reports	Yes	Yes	Yes	
Rule 15c3-4 Risk Management Records	Yes	Yes	No	
Credit Risk Determinations for Certain Net Capital Rules	Yes, but only with respect to ANC BD-SBSDs	Yes, but only with respect to Stand-Alone ANC SBSDs	No	Instead of the 100% deduction that applies to most unsecured receivables under the net capital rules, ANC BD-SBSDs are permitted to take a credit risk charge that is typically smaller than the 100% deduction for uncollateralized receivables from certain OTC derivatives counterparties. Among other things, the amount of the credit risk charge is based on the creditworthiness of the counterparty. Similar rules have been proposed for Stand-Alone ANC SBSDs. In addition, ANC BD-SBSDs are required, and Stand-Alone ANC SBSDs would be required under the proposal, to preserve records relating to their internal credit assessments of counterparties for purposes of the credit risk charge.
Information Submitted Pursuant to Regulation SBSR	Yes	Yes	Yes	
Regulatory Authority Reports	Yes	Yes	Yes, but only reports related to their SBS activities	These include reports to a regulatory authority, which would include the SEC, CFTC, any self-regulatory organization, any U.S. securities commission and a prudential regulator, to the extent that the prudential regulator oversees SBS activities.
Compliance, Supervisory, and Procedures Manuals	Yes	Yes	Yes, but only if the records relate to their SBS activities	
Records to be preserved for the life of the enterprise and of any successor enterprise				
Corporate Documents	Yes	Yes	Yes	Corporate documents include articles of organization or formation, minute books, and stock certificate books.

Appendix B

Summary of Proposed Reporting Requirements for SBSDs

Requirement	Broker-Dealer SBSDs	Stand-Alone SBSDs	Bank SBSDs	Comments
Form SBS				
Part 1	Yes	Yes	No	This Part is similar to existing FOCUS Report Part II CSE, but includes additional sections and line items relating to SBS and swap activities.
Part 2	No	No	Yes	This Part elicits financial information already required to be reported in call reports, as well as additional details relating to SBS and swap activities.
Part 3	Potentially	Potentially	Potentially	This Part applies to an SBSD dually registered as an FCM. It elicits information about the firm's net capital computation and segregation of customer assets under CFTC rules.
Part 4	Yes	Yes	No	This Part consists of various schedules eliciting detailed information about a firm's SBS and swap positions, counterparties, and exposures.
Part 5	No	No	Yes	This Part elicits information about a firm's SBS and swap positions, but on a more limited basis than Part 4.
Date that report must be filed with the SEC	Within 17 business days after the end of each month	Within 17 business days after the end of each month	Within 17 business days after the end of each quarter	
Requirement to file upon Termination of Membership in an SRO	Yes, within 2 business days after termination of membership	No	No	
Annual Reports¹				
Annual Report filed with the SEC ²	Yes	Yes	No	

¹ The Annual Report consists of a financial report, a compliance report and a report by an independent public accountant registered with the PCAOB covering the financial report and the compliance report. The financial report must contain financial statements, including, among others, a statement of financial condition, a statement of income, and a statement of cash flows. The compliance report must contain statements, among other things, that the firm has maintained Internal Control Over Compliance; that Internal Control Over Compliance was effective during the most recent fiscal year; the firm was in compliance with certain net capital and customer protection rules as of the end of the most recent fiscal year; and the information that the firm used to state whether it was in compliance with those net capital and customer protection rules was derived from the books and records of the firm. Further, if applicable, the compliance report must contain a description of: (1) each identified material weakness in the Internal Control Over Compliance during the most recent fiscal year; and (2) each instance of non-compliance with certain net capital and customer protection rules as of the end of the most recent fiscal year.

² For BD-SBSDs, the Annual Report would have to be filed (1) at the office of the SEC for the region where the broker-dealer has its principal place of business; (2) at the SEC's principal office in Washington, D.C.; (3) at the principal office of the broker-dealer's designated examining authority; and (4) with SIPC. For Stand-Alone SBSDs, the Annual Report would have to be filed (1) at the regional office of the SEC for the region in which the SBSD has its principal place of business and (2) at the SEC's principal office in Washington, D.C.

Requirement	Broker-Dealer SBSBs	Stand-Alone SBSBs	Bank SBSBs	Comments
Timing of Filing with the SEC	Within 60 calendar days after the end of the fiscal year	Within 60 calendar days after the end of the fiscal year	N/A	
Additional Reports Applicable Only to ANC SBSBs				
Monthly Reports on Liquidity Stress Tests ³	Yes	Yes	No	
Provision of Annual and Semi-Annual Reports and Related Documents to Customers				
Annual audited financial statement and related material containing (1) statement of financial condition, (2) statement relating to net capital, and (3) statement regarding material weaknesses if identified by auditors	Yes – physical disclosure ⁴ Due: Generally within 45 days after deadline for filing audited financial statement with SEC	Yes – mandated web-based disclosure ⁵ Due: Within 10 business days after deadline for filing audited financial statement with SEC	No	
Semi-annual unaudited statement containing (1) statement of financial condition and (2) statement relating to net capital	Yes – physical disclosure ⁶ Must be as of the date that is six months after the date of the most recent audited statements. The reports must generally be furnished within 65 days after the date of the unaudited statements.	Yes – mandated web-based disclosure ⁷ Must be as of the date that is six months after the date of the most recent audited statements. These reports must be posted within 30 calendar days of the date of the unaudited statements.	No	

³ Under the liquidity stress test requirements in the SEC’s proposed Capital and Margin rules, ANC broker-dealers (including ANC BD-SBSBs) and Stand-Alone ANC SBSBs would be required, among other things, to conduct a liquidity stress test at least monthly.

⁴ A broker-dealer is exempt from sending the statement of financial condition to customers if the broker-dealer, among other things: (1) sends its customers the semi-annual unaudited statements referred to below relating to the firm’s net capital and, if applicable, the identification of any material weaknesses; and (2) makes the statement of financial condition available on the broker-dealer’s website home page and maintains a toll-free number that customers can call to request a copy of the statement, which the broker-dealer must send promptly to the customer at no charge.

⁵ The required information must also be made available in writing, upon request, to any person that has an SBS account. The firm must also maintain a toll-free number to receive such requests.

⁶ A broker-dealer is exempt from sending the statement of financial condition to customers if the broker-dealer, among other things: (1) sends its customers semi-annual statements relating to the firm’s net capital and, if applicable, the identification of any material weaknesses; and (2) makes the statement of financial condition available on the broker-dealer’s website home page and maintains a toll-free number that customers can call to request a copy of the statement, which the broker-dealer must send promptly to the customer at no charge.

⁷ The required information must also be made available in writing, upon request, to any person that has an SBS account. The firm must also maintain a toll-free number to receive such requests.

Appendix C

Summary of Proposed Notification Requirements for SBSBs

Notification Requirement	Broker-Dealer SBSBs	Stand-Alone SBSBs	Bank SBSBs	When notification must be given to the SEC
Net Capital or Tentative Net Capital Below Minimum	Yes	Yes	No	The same day on which the firm (i) discovers the deficiency or (ii) is notified by the SEC or its designated examining authority of the net capital deficiency
Early Warning of Potential Net Capital or Potential Tentative Net Capital Problem	Yes	Yes	No	Promptly (but within 24 hours)
Notice of Adjustment of Reported Capital Category	No	No	Yes	When the Bank SBSB files an adjustment of reported capital category with its prudential regulator
Failure to Make and Keep Current Books and Records	Yes	Yes	Yes	The same day that the failure arises, and within 48 hours of that notice, a report stating what the firm has done or is doing to correct the situation
“Material Weakness” in “Internal Control Over Compliance”	Yes	Yes	No	Within 24 hours of the discovery or notification of the material weakness, and within 48 hours of the notice, a report stating what the firm has done or is doing to correct the situation
Insufficient Liquidity Reserves	Yes, but only with respect to ANC BD-SBSBs	Yes, but only with respect to Stand-Alone ANC SBSBs	No	Immediate notice in writing if the liquidity stress test indicates that the amount of the ANC SBSB’s liquidity reserve is insufficient
Failure to Make a Required Reserve Deposit for the Exclusive Benefit of SBS Customers	Yes	Yes	Yes	Immediate notice in writing if the firm fails to make the required deposit