

**SUPPORTING STATEMENT FOR NEW AND  
REVISED INFORMATION COLLECTIONS**

**Registration of Swap Dealers and Major Swap Participants**

**OMB CONTROL NUMBER 3038-New**

**Justification**

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (“CEA”) to establish a comprehensive new regulatory framework for swaps and security-based swaps. The goal of this legislation was to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things, providing for the registration and comprehensive regulation of swap dealers (“SDs”) and major swap participants (“MSPs” and, together with SDs, “swaps entities”). Section 731(b) of the Dodd-Frank Act requires swaps entities to register with the Commodity Futures Trading Commission (“Commission”). Section 731(d) of the Dodd-Frank Act requires the Commission to adopt rules for registered swaps entities. The Commission is therefore proposing regulations (“Proposal”) regarding the process for registering swaps entities with the Commission. The Commission’s existing registration process for futures, commodity options and retail forex intermediaries, as well as for floor traders and floor brokers, is extensively set forth in Part 3 of the regulations under the CEA. Some parts of the Proposal consist entirely of adding appropriate references to SDs and MSPs to existing Part 3 regulations. Other parts of the Proposal involve substantive changes to existing Part 3 regulations because of the particular characteristics of SDs, MSPs and swaps. To the extent practicable, the Commission has proposed requirements that are unique to SDs and MSPs in a new Part 23 of the regulations under the CEA. Proposed regulation 170.16 would require SDs and MSPs to become members of a registered futures association. The collections required by the Proposal are necessary to implement the Dodd-Frank Act.

**2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The information received pursuant to the Proposal would be analyzed by Commission staff and would form a basis for recommendations to the Commission concerning approval of registration, compliance with the CEA’s requirements, or whether the Commission should take any action regarding lack of compliance with the CEA.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

Information is required to be submitted electronically.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

SDs and MSPs are new classes of registrants; as such, the required information is not available from any other source. Section 731(c) of the Dodd-Frank Act requires registration of SDs and MSPs regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission. If an SD or MSP is already registered with the Commission, or if an applicant seeks to register in more than one capacity, it is just a matter of checking off the box on the screen of the requisite electronic, online form.<sup>1</sup>

**5. If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-I), describe the methods used to minimize burden.**

This collection of information will not have a significant impact on a substantial number of small entities. The required information does not involve any small businesses or other small entities.

**6. Describe the consequence to the Federal Program or policy activities if the collection were conducted less frequently as well as any technical or legal obstacles to reducing burden.**

If the information required under this collection of information were not collected, enforcement of Commission rules would be adversely affected.

**7. Explain any special circumstances that require the collection to be conducted in a manner:**

- **requiring respondents to report information to the agency more often than quarterly;**

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<sup>1</sup> These forms are available on the website of the National Futures Association (“NFA”), a registered futures association to whom the Commission previously has delegated processing responsibility for existing categories of registrants under the CEA. The Commission similarly intends to delegate to NFA the authority to process registration forms filed by SDs and MSPs. The forms will be amended in time for compliance with any SD and MSP registration process rules as the Commission may adopt.

The proposed regulations require respondents to report information to the Commission annually and occasionally. The proposed regulations do not require respondents to report information to the Commission more often than quarterly.

- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it:**

In order for the Commission to adequately assess whether a swaps entity may be registered, a swaps entity might be required to prepare a written response to a collection of information in fewer than 30 days depending on the exigency of the situation.

- **requiring respondents to submit more than an original and two copies of any document;**

Swaps entities are required to submit only single copies of applications.

- **requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**

The Proposal does not specifically mandate retention of any registration records. However, Commission rule 1.31 requires that:

"All books and records required to be kept by the (Commodity Exchange) Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice."

- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**

No statistical surveys are involved.

- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**

The requirements do not involve use of any statistical data classification.

- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

The requirements do not involve a pledge of confidentiality regarding the collection of data.

- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

The agency has procedures to protect the confidentiality of a respondent's information. These are set forth in 17 CFR Part 145.

For enforcement purposes, Commission rule 1.31 requires that:

"All books and records required to be kept by the (Commodity Exchange) Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice."

**8. If applicable, provide a copy and identify the date and page number of publication in the *Federal Register* of the agency's notice required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

A Federal Register Notice soliciting comments on this Collection was published in the *Federal Register* (75 FR 71379 – 11/23/10). No comments received to-date.

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping disclosure, or reporting format (if any, and on the data elements to be recorded, disclosed, or reported.**

The Commission is seeking public comments on the collection of information. Commission staff has held meetings with persons outside the agency to discuss the registration process generally.

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

Not applicable. No such circumstances are anticipated.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

This question does not apply.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.**

The Commission does not provide respondents with an assurance of confidentiality, only to the extent provided by law. The Commission fully complies with section 8(a)(1) of the CEA, which strictly prohibits the Commission, unless specifically authorized by the CEA, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

This question does not apply. None of the required information is sensitive, as that term is used in Question 11.

**12. Provide estimates of the hour burden of the collection of information. The Statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

See Attachment A. The Commission estimates that an aggregate of 752 respondents will file a total of 1820 responses annually. The estimated average number of hours per response is 0.5 hours per response for the Form 7-R; 0.4 hours per response for the Form 8-R; 3 minutes per response for the Form 7-W; 6 minutes per response for the Form 8-T; and 3 minutes per response

for the Form 3-R. The cost of the hourly burden is estimated to be between \$10 and \$25 per hour.

**13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

- **The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

Total costs are included in the answer to question 12. No new start-up and maintenance costs are involved.

**14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

There are no new annualized costs to the Commission that will result in connection with the adoption of the registration process for SDs and MSPs.<sup>2</sup>

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<sup>2</sup> This is because, as is stated in n. 1 above, the Commission intends to delegate to NFA the authority to process registration forms filed by SDs and MSPs. Commission staff periodically conducts reviews of NFA's registration processing program, and its review of how NFA is

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.**

The program changes or adjustments are required by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), which established a new regulatory scheme.

**16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

This question does not apply.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

This question does not apply.

**18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.**

This question does not apply.

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processing the registration forms filed by SDs and MSPs will be folded into the existing review scheme.

## Attachment A

### Section 731 of the Dodd-Frank Act – Rules Pertaining to Registration Requirements Applicable to Swap Dealers and Major Swap Participants

#### OMB Collection File 3038-New

The burden associated with the proposed new rules implementing registration of swap dealers and major swap participants is estimated to be 752 hours, which will result from (i) application for registration by SDs and MSPs and submission of required information on behalf of their respective principals; (ii) initially, no withdrawals from registration by SDs and MSPs and a relatively small decrease in the number of their respective principals; and (iii) initially, no reported corrections. The respondent burden for this collection is estimated to average 0.5 hours per response for the Form 7-R; 0.4 hours per response for the Form 8-R; 3 minutes per response for the Form 7-W; 6 minutes per response for the Form 8-T; and 3 minutes per response for the Form 3-R. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information. The estimated burden was calculated as follows:

#### Form 7-R

Respondents/Affected Entities: 300

Estimated number of responses: 300

Estimated total annual burden on respondents: 0.5 hours

Frequency of collection: On occasion and annually

Burden statement: 300 respondents X 0.5 hours = 150 Burden Hours

#### Form 8-R

Respondents/Affected Entities: 5 APs per each of 300 SDs and MSPs

Estimated number of responses: 1500

Estimated total annual burden on respondents: 0.4 hours

Frequency of collection: On occasion

Burden statement: 1500 respondents X 0.4 hours = 600 Burden Hours

#### Form 8-T

Respondents/Affected Entities: 1 AP per each of 20 SDs and MSPs

Estimated number of responses: 20

Estimated total annual burden on respondents: 6 minutes

Frequency of collection: On occasion

Burden statement: 20 respondents X 0.1 hours = 2 Burden Hours

Commission staff estimates that all respondents could expend in the aggregate between \$7,520 and \$18,800 annually to comply with the proposed regulations. Depending on the expertise of the filer or recordkeeper, the cost to the public of the hour burdens varies between \$10 to \$25 per hour.