

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

Protection of Collateral of Counterparties to Uncleared Swaps;
Treatment of Securities in a Portfolio Margining Account
In a Commodity Broker Bankruptcy

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.

Section 724(c) of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA”) to add, as section 4s(l) thereof, provisions concerning the rights of counterparties to swap dealers (“SDs”) and major swap participants (“MSPs”) with respect to the segregation of collateral supplied for margining, guaranteeing, or securing uncleared swaps. The new section 4s(l)(1)(A) requires that a SD or MSP must notify each counterparty with respect to an uncleared swap at the beginning of a swap transaction that the counterparty has the right to require segregation of the fund or other property supplied to margin, guarantee, or secure the obligation of the counterparty. Proposed Regulation 23.601 implements this statutory requirement. The regulation does not specify the form that the notification must take, but, in order to ensure that the notification is provided to a person in a position to evaluate and act on the information provided, proposed section 23.601(c) requires that the notification shall be made to the Chief Risk Officer, or, if there is no such Officer, the Chief Executive Officer, or, if none, the highest level decisionmaker for the counterparty. To help ensure that the information provided by the notification is received and considered by the appropriate officer of the counterparty, section 23.601(d) requires that the SD or MSP shall obtain from the counterparty confirmation of receipt from the recipient specified in section 23.601(c) and retain it as a business record pursuant to section 1.31 of the Commission’s rules. Proposed section 23.601(e) permits a SD or MSP that engages in multiple swap transactions with a given counterparty to make the required notification to that counterparty once a year rather than at the beginning of each separate swap transaction.

The new section 4s(l)(4) of the CEA mandates that, if the counterparty does not choose to require segregation, the SD or MSP shall report to the counterparty, on a quarterly basis, “that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.” This provision is implemented in proposed Regulation 23.604(a), which requires that such reports be made no later than the fifteenth business day of each calendar quarter for the preceding calendar quarter. Proposed Regulation 23.604(a) makes the Chief Compliance Officer of the SD or MSP required by Section 4s(k) of the CEA responsible for such report. Proposed Regulation 22.604(b) provides that this obligation shall apply no earlier than the ninetieth calendar day after the first swap is transacted between the counterparties.

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 by uncleared swap counterparties pursuant to Regulation 23.601 would alert counterparties to their right, if they so choose, to have funds or property used as margin in uncleared swaps transactions with SDs and MSPs to be kept segregated from the property of the SD or MSP. It would further alert counterparties of the need to request such segregation if they wish to exercise this right.

The information received by uncleared swap counterparties pursuant to Regulation 23.604 would be used to confirm that the back office procedures followed by a SD or MSP with whom they are dealing comply with the agreement of the parties.

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 may 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.

The disclosures required by the statute are not the subject of existing regulations.

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.

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 disclosure required by Regulation 23.601 were permitted to be made less frequently than once per year, the effectiveness of the disclosure in informing uncleared swaps counterparties of the right to segregation of margin and the need to request segregation to exercise that right would be weakened. The frequency of the disclosure required by Regulation 23.604 is specified by new section 4s(1)(4) of the CEA.

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;
- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requiring respondents to submit more than an original and two copies of any document;
- requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- 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;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- 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
- 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.

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 copy of the *Federal Register Notice* (75 FR 75432 – 12/3/2010), soliciting comments on this collection accompanies this filing.

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.

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.

Does not apply.

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

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 collection of information involves disclosure of information regarding rights or practices from one private business entity to another.

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.

None of the regulations require the giving of sensitive information, 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.**

The disclosure requirement of proposed Regulation 23.601 is expected to apply to about 300 entities.¹ Each such entity will be required to make the required disclosure once each year to each of its counterparties in uncleared swaps transactions. It is expected that each disclosure would require approximately 0.3 hours of staff time by staff with a salary level of approximately \$20 per hour. Because of the absence of experience under the new requirements of the Dodd-Frank Act, it is uncertain what average number of uncleared swaps counterparties will be dealt with annually by swap dealers and major swap participants. Assuming that each of 14 major swap dealers or major swap participants makes the required disclosure to 5,000-10,000 counterparties per year, and each of the 286 remaining swap dealers or major swap participants makes the required disclosure to 200 counterparties per year, there would be a total of approximately 130,000-200,000 disclosures per year.²

The disclosure requirement of proposed Regulation 23.604 will apply to the same 300 entities as the requirement of proposed Regulation 23.601. Each such entity will be required to make the required disclosure four times each year to each of its uncleared swaps counterparties that does not choose to require segregation of capital. Because there is as yet no experience with the effect of the disclosure of the right to segregation of collateral and other requirements of the

¹ This estimate is based on the assumption that there will be about 250 SDs and 50 MSPs.

² The estimate of the number of counterparties receiving disclosure from each swap dealer or major swap participant takes into consideration the possibility that a single counterparty may deal with more than one swap dealer or major swap participant in a year. Thus, the total number of required disclosures may exceed the total number of counterparties making use of uncleared swaps subject to the disclosure requirement.

Dodd-Frank Act, it is uncertain how many uncleared swaps counterparties will decline such segregation. Assuming that half of all uncleared swaps counterparties do not choose segregation of collateral, proposed Regulation 23.604 would require a total of approximately 260,000-400,000 disclosures annually. It is expected that each disclosure would, on average, require approximately 0.3 hours of staff time by staff with a salary level of about \$30 per hour.³ . The estimated total annual burden would be approximately 80,000-120,000 hours. See Attachment A for summary.

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)**

³ The time and level of personnel required for the disclosure required by proposed Regulation 23.604 in particular transactions will depend, to some extent, on the specifics of the agreement of the parties with regard to the back-office procedures of the SD relating to margin and collateral requirements, and the extent to which such agreements with regard to procedures are standardized at a particular SD. The average burden figure thus reflects a varying level of burden in particular transactions.

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.

This collection of information is not expected to involve significant start-up or capital costs because the regulations require standardized disclosures from SDs and MSPs to their customers in transactions whose business character requires extensive documentation independent of regulatory requirements. Based on the hour burden and wage rate set forth in the answer to question 12, the estimated annual cost of the notification required by Regulation 23.601 is expected to be in the range \$800,000-1,200,000 and the estimated annual cost of the notification required by Regulation 23.604 is expected to be in the range \$2,400,000-3,500,000. See Attachment A for summary.

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.

The collection of information is not expected to impose significant annual costs on the Federal Government because it involves a requirement for certain private parties to make disclosures to other private parties with whom they do business.

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

This is a new collection of information to implement statutory requirements as describe in the answer to question 1.

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.

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.

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.

Does not apply.

Attachment A

Part 23 – Disclosure and Retention of Certain Information Relating to Swaps Customer Collateral

OMB Collection File 3038-NEW

Disclosure Required by Regulation 23.601

Number of Respondents 300
Estimated Average Hours Per Response .30
Frequency of Reporting Annual
Disclosures may be made electronically at option of respondent.

Burden	Disclosures	Burden Hours	Burden Costs
New	130,000-200,000	40,000-60,000	<i>\$800,000-\$1,200,000</i>

Disclosure Required by Regulation 23.604

Number of Respondents 300
Estimated Average Hours Per Response .30
Frequency of Reporting Quarterly
Disclosures may be made electronically at option of respondent.

Burden	Disclosures	Burden Hours	Burden Costs
New	260,000-400,000	80,000-120,000	<i>\$2,400,000-\$3,500,000</i>