

## SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

### Swap Data Repositories, Registration and Regulatory Requirements

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, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) went into effect.<sup>1</sup> Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA”)<sup>2</sup> to establish a comprehensive new regulatory framework for swaps and security-based swaps. Section 728 of the Dodd-Frank Act specifically requires the Commodity Futures Trading Commission (“CFTC” or “Commission”) to establish certain standards for the registration and governance of swap data repositories (“SDRs”). In addition to implementing standards governing registration of and statutory duties applicable to SDRs, the CFTC is also required to adopt regulations that mitigate certain conflicts of interest in the operation of these entities and ensure appropriate levels of access by the Commission and certain other regulators to the data maintained by SDRs. Accordingly, the CFTC has proposed new part 49 of the Commission’s Regulations. This supporting statement concerns new collections of information required by these new regulations. The following new regulations would require collections of information:

- Proposed § 49.3 would establish registration procedures requiring SDRs to demonstrate compliance with specified registration requirements on Form SDR. In addition to the one-time initial registration requirement, proposed § 49.3 also requires registered SDRs to amend Form SDR annually as well as when certain information in specified items on Form SDR become inaccurate.
- Proposed § 49.3(c) would require an entity that has submitted an application to become registered but subsequently decides to withdraw or vacate its application, to submit (in addition to amendments to Form SDR) a filing requesting the Commission take the action specified in the filing, *i.e.*, vacate or withdrawal of application for registration.
- Proposed § 49.4 would require a registered SDR who seeks to withdraw from registration to, in addition to amending Form SDR, give notice in writing to the Commission requesting that its registration as an SDR be withdrawn.

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<sup>1</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 7 U.S.C. 1 *et seq.*

- Proposed § 49.7 would require that an SDR located in foreign jurisdictions and which seeks to register with the Commission to file, in addition to Form SDR, an opinion of counsel that the SDR, as a matter of law, is able to provide the Commission with prompt access to the books and records of such SDR and that the SDR can submit to onsite inspection and examination by the Commission.
- Proposed § 49.10 would require SDRs to accept data from various third parties such as counterparties, and proposed regulation 49.11 would require SDRs to ensure that submitted data is accurate.
- Proposed § 49.12 would require registered SDRs to maintain the swap transaction data it receives for a period of not less than five (5) years after the applicable swap expires, during which time the records must be readily available by the SDR and available to the Commission via real-time electronic access. Thereafter, the swap data must be archived and retrievable by the SDR within 3 business days.
- Proposed § 49.16 would require SDRs to develop written policies and procedures to protect the confidentiality of data.
- Proposed § 49.17 would require a registered SDR to provide direct electronic access to the Commission or its designees. This requirement includes that the SDR provide direct access to its staff, system, and any other area of the SDR that the Commission or its designees deems necessary. Additionally, § 49.17(d) would require an SDR to make such data available to other parties, including other regulators (*i.e.*, Appropriate Domestic Regulators and Appropriate Foreign Regulators).

Proposed § 49.17 would also require that if an Appropriate Domestic Regulator or Appropriate Foreign Regulator files an application to gain access to the swaps data maintained by an SDR, such SDR must notify the Commission, electronically and in a format specified by the Commission, that such a request was made. Additionally, the proposed regulation would require that a “Confidentiality and Indemnification Agreement” be signed between the SDR and Appropriate Domestic Regulators or Appropriate Foreign Regulators before such regulator gains access to the data held by the SDR.

- Proposed § 49.22 would require that a chief compliance officer (“CCO”) of a registered SDR submit an annual compliance report that contains a description of the SDR’s written policies and procedures, including those related to the code of ethics, conflicts of interest, and compliance with Section 21(c) core principles. Additionally, proposed § 49.22 requires a registered SDR’s CCO to establish procedures for the remediation of noncompliance issues. This duty includes establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues. If any material error is discovered in the annual compliance report, the CCO must promptly file an amendment with the Commission to correct such material error or omission. An amendment shall contain the oath or certification required by proposed § 49.22(e)(7) that, to the best of the

CCO's knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete.

Proposed § 49.22 would impose an additional recordkeeping requirement on registered SDRs to maintain: (a) a copy of written policies and procedures, including the code of ethics and conflicts of interest policies in furtherance of compliance with the Act and Commission regulations, and (b) any records relevant to the annual compliance report.

- Proposed § 49.23 would require registered SDRs to establish procedures for the exercise of emergency authority in the event of an emergency. A registered SDR policies and procedures shall include provisions to notify the Commission as soon as reasonably practicable of any exercise of emergency authority. When notifying the Commission of any exercise of emergency authority, a SDR shall explain the reasons for taking such emergency action, explain how conflicts of interest were minimized, and document the decision-making process. Underlying documentation shall be made available to the Commission upon request.

- Proposed § 49.24 would require that registered SDR maintain a business continuity-disaster recovery plan ("BC-DR" plan) which can be invoked in case of an emergency. Copies of the current BC-DR plan and other current emergency procedures shall be provided to the Commission upon request.

The proposed § 49.24 would specifically require a registered SDR to notify the Commission staff of: (1) all system malfunction, (2) cyber security incidents or targeted threats that actually or potentially jeopardize automated system operation, reliability, security, or capacity, and (3) any activation of the SDR's BC-DR plan. Additionally, an SDR shall give the Commission staff timely notice of all (1) planned changes to automated systems that may impact the reliability, security, or adequate scalable capacity of such systems; and (2) planned changes to the SDR's program of risk analysis and oversight.

- Proposed § 49.25 would require a registered SDR to report to the Commission (and provide sufficient documentation to substantiate any calculations made therein) the amount of financial resources available to the SDR to meet the requirements set forth in this proposed section, the value of the each financial resource available, and a financial statement, including the balance sheet, income statement, and statement of cash flows of the registered SDR. In addition to the documentation substantiating the calculations made in the financial report and valuations conducted, a registered SDR must provide copies of any agreement establishing or amending a credit facility, insurance coverage, or other arrangement evidencing or otherwise supporting the SDR's conclusions.

- Proposed § 49.26 would require a registered SDR to provide a disclosure document to any reporting entity before accepting swap data from such reporting entity. Additionally, a reporting party may request these disclosure documents at any time. The disclosure documents

must contain written information which reasonably enables the reporting entity to identify and accurately evaluate the risks and costs associated with using the registered SDR's services.

Estimated numbers of respondents and projected total annual responses and average number of hours per response are provided in Attachment A.

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 data would be used by the Commission to assess the governance arrangements, operations and compliance functions of registered SDRs, and to ensure that registered SDRs are complying with the core principals enumerated in Section 21 of the Act. Additionally, the data collected will be made available and used for regulatory purposes by the Commission and other domestic and foreign regulators including the: Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Farm Credit Administration and Federal Housing Finance Agency, Financial Stability Oversight Council, Securities and Exchange Commission, Department of Justice, and any other person the Commission determines to be appropriate, including foreign financial supervisors, foreign central banks, and foreign ministries. Lastly, SDRs acting as public disseminators will publicly disseminate data as well as calculate the appropriate minimum block size for purposes of real time reporting pursuant to proposed part 43 of the Commission's Regulations. The publication of the swap data by a registered SDR is intended to increase the transparency in the swaps market so that market participants and regulators can better measure systematic risk in the national economy.

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.

All the information collection requirements involve the use of electronic collection protocols. All required submissions may be submitted electronically. Additionally, proposed § 49.17 requires that the Commission (or the Commission's designee including other registered entity) have the ability to electronically access all real-time data held by a registered SDR.

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.

These regulations are the first effort by the Commission to prescribe provisions for the reporting, recording and maintaining of data for swap transactions. Prior to the adoption of the Dodd-Frank Act, the Commission did not have the legal and/or regulatory authority to require

the registration and/or regulation of SDRs or the collection or recordkeeping of swap data from market participants. There are no existing regulations that could be modified to serve a similar purpose.

5. If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-1), describe the methods used to minimize burden.

The Commission has established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the Regulatory Flexibility Act. SDRs are a new category of registrant. In the Federal Register release proposing the regulations containing the collection of information requirements, the Commission will not define registered SDRs as small entities and will certify that SDRs are not “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.

Without the frequency of reporting set forth in proposed part 49, the Commission would not be able to adequately assess a registered SDR’s compliance with its statutory duties, core principles and additional duties. More importantly, without the frequency of reporting, the Commission would be unable to evaluate the data maintained by the SDR, whether specifically submitted to the Commission or its designee or directly accessed electronically. The recordkeeping requirements of proposed part 49 are required to ensure that data submitted by market participants and maintained by a registered SDR are accurate in the event the accuracy of the swap data is challenged at a later date by either parties to a swap or the Commission pursuant to an investigation.

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;

As part of its emergency procedures, an SDR may also be required to respond and report information more often than quarterly. Additionally, a registered SDR is required to amend Form SDR annually as well as when certain information on Form SDR becomes inaccurate. The Commission estimates that respondents will file amendments to Form SDR approximately three times a year, including the mandatory annual amendment. Additionally, without the frequency of reporting, the Commission would not be able to accomplish its policy activities. See response to Question 6.

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

Proposed § 49.23 requires a registered SDR to establish emergency policies and procedures which, if triggered, would require the SDR to notify the Commission of any action taken by the SDR as soon as reasonably practicable regarding any invocation of emergency authority. As part of its notification to the Commission, the SDR must explain the reasons for taking such emergency action, explain how conflicts of interest were minimized, and document the decision making process. Underlying documentation must be made available to the Commission upon request.

Additionally, proposed § 49.15 would require a registered SDR to notify the Commission of any swap transaction for which the real-time swap data was not received by the SDR within the time period required by proposed § 43.3(a)(3). This notification must be submitted electronically to the Commission within forty-eight (48) hours of when the SDR first receives an untimely real-time swap data report for one of the parties to a swap transaction.

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

Respondents are not required 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;

Respondents have two recordkeeping responsibilities that require a registered SDR to keep the information for a period greater than three years.

First, proposed § 49.12 would require the registered SDR to maintain the swap transaction data it receives for a period of not less than five (5) years after the applicable swap expires, during which time the records must be readily available by the SDR and available to the Commission via real-time electronic access. Thereafter, the swap data must be archived and retrievable by the SDR within 3 business days.

Second, proposed § 49.22(g) states that a registered SDR must maintain a copy of the written policies and procedures, including the code of ethics and conflicts of interest policies adopted in compliance with the Act and Commission regulations, copies of all materials in connection with the review of an annual compliance report that records the submission of the annual compliance report to the board of directors or senior officer, and any records relevant to the registered SDR's annual compliance report. The SDR is required to preserve these records for a period of 5 years with ready access during the first 2 years of the 5 year period.

- 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;

The proposed regulations do not involve statistical surveys.

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

The proposed regulations do not involve the use of statistical data.

- 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

All confidentiality pledges are supported by authority established in the Dodd-Frank Act, the CEA, or these proposed regulations.

- 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.

Proposed § 49.17 would require a registered SDR to provide the Commission or its designees with direct electronic access to the swap data that is held and maintained by the SDR. In fulfilling this requirement, however, proposed § 49.17 provides that “[e]xcept for specifically set forth in this regulation, the Commission’s duties and obligations regarding the confidentiality of business transactions or market positions of any person and trade secrets or names of customers identified in Section 8 of the Act are not affected.”

Section 8(a) of the Act provides that, “unless specifically authorized in this Act, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” A number of narrow exceptions are set forth in Sections 8(b) and (e) of the Act permitting the Commission to disclose “Section 8 material” for (i) prior public disclosures, (ii) congressional, administrative and/or judicial proceedings, (iii) other federal departments and agencies, individual states and foreign futures authorities, and (iv) registered entity investigations.

In addition, Section 21(c)(6) of the Act, as amended by the Dodd-Frank Act, provides that a registered SDR must “maintain the privacy of all swap transaction information that the swap data repository receives from a swap dealer, counterparty, or any other registered entity.” To comply with Section 21(c)(6) of the Act, proposed § 49.16 provides the privacy and confidentiality requirements of registered swap data repositories. Proposed § 49.16 requires registered SDRs to “establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy of any and all swap information that the swap data repository receives from reporting entities.” The policies and procedures instituted by a SDR shall “include, but are not limited to” any and all swap information that the swap data repository shares with affiliates and non-affiliated third parties. Proposed § 49.16 also requires registered SDRs to “establish and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of: (i) Section 8 Material

Information; (ii) SDR proprietary information; and/or (iii) intellectual property, such as trading strategies or portfolio positions, by the swap data repository or any person associated with the swap data repository.”

Additionally, proposed § 49.18 requires that a registered SDR enter into a confidentiality and indemnification agreement with any Appropriate Domestic Regulator or Appropriate Foreign Regulator who seeks access to the swap data held by the registered SDR. Such an agreement must state “that the [Appropriate Domestic Regulator or Appropriate Foreign Regulator] shall abide by the confidentiality requirements described in Section 8 of the Act relating to the swap data that is provided.”

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 C.F.R. 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.

The Commission is affirmatively seeking comment from the public and federal agencies on the proposed information collection. A copy of the proposed regulation as it appears in the *Federal Register* (75 FR ), including the explicit solicitation of comment on all aspects of the reporting and recordkeeping burdens imposed, is accompanied with this submission.

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.

A public roundtable was held on September 14, 2010, at the CFTC Headquarters, whereby representatives from various sectors who would be impacted by the new rules and regulations were asked questions and were able to provide on-the-record answers. The transcript of this roundtable discussion can be found on [www.cftc.gov](http://www.cftc.gov). The proposed regulations will be published in the *Federal Register* seeking public comment and the Commission will also seek public comment on the collections associated with the new regulations.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three 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.

As part of the rulemaking process with respect to SDRs, the Commission has conducted external meetings with representatives of affected parties. A list of the external meetings



conducted can be found on [www.cftc.gov](http://www.cftc.gov). The Commission expects these efforts to continue as swap transaction reporting to SDRs is implemented throughout 2011.

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.

Section 8(a) of the CEA generally prohibits the Commission from separately disclosing the “business transactions or market positions of any person and trade secrets or names of customers.” The Commission also has adopted Freedom of Information Act regulations, 17 CFR part 145 which implements the federal statute set forth in 5 U.S.C. §552, including exemptions to disclosure which permit a federal agency to withhold information prohibited from disclosure by another statute. See 5 U.S.C. § 552(b)(3) and Commission Regulation § 145.5(c), 17 CFR § 145(c). See also the response to Question 7.

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.

The regulations covered by the collections do not 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.

### Registration

Under proposed § 49.3, SDRs would be required to demonstrate compliance with specified registration requirements on Form SDR. The proposed collection for this one-time initial registration is estimated to involve 400 burden hours per SDR. The Commission bases this estimate on consultation with other regulators involving similar collections. As noted above, the Commission believes 15 entities will be subject to this burden. Accordingly, the Commission estimates that the one-time initial registration burden for all SDRs will be approximately 6000 annual burden hours. Additionally, under proposed § 49.3, registered SDRs must amend Form SDR annually (i.e., within 60 days after the end of each calendar year of such SDR) as well as when certain information specified on the Form SDR becomes inaccurate. The Commission estimates that the hourly burden for complying with each amendment requirement will be 15 burden hours per amendment for each SDR. The Commission estimates that respondents will be required to file, on average, including the mandatory annual amendment, three amendments per year, for an ongoing annualized burden of approximately 45 hours per SDR and approximately 675 burden hours for all SDRs. In addition to amending Form SDR, the following filing requirements may be imposed on an SDR in the following circumstances.

Under proposed § 49.3, a SDR may withdraw its registration application by filing an electronic request with the Secretary of the Commission at the Commission's Washington, D.C. office. In the event an SDR is registered and seeks to withdraw from registration, proposed § 49.4 would require such SDR to give notice to the Commission, in writing, requesting that its registration as an SDR be vacated. Such notice must be made at least 90 days prior to the date named therein as the date when the vacation of registration shall take effect. The Commission estimates the burden hours associated with these filings, which are in addition to and separate from the requirement to amend Form SDR, to be 10 hours per filing. Additionally, the Commission estimates that such filings will occur once over a period of two years for all registered SDRs. Therefore, the average annual burden hour for all SDRs is estimated to be 5 burden hours.

If an SDR is located in a foreign jurisdiction and is seeking to register, proposed § 49.7 requires such SDR to, in addition to filing a Form SDR, provide the Commission with an opinion of counsel that the SDR, as a matter of law, is able to provide the Commission with prompt access to the book and records of such SDR and that the SDR can submit to onsite inspection and

examination by the Commission. The Commission estimates that the hourly burden for complying with each opinion of counsel will be 20 burden hours per opinion for each SDR.

The Commission estimates that 5 SDRs will be located outside the United States and therefore the aggregate burden hours associated with this requirement is estimated to be 100 for each SDR for which this regulation applies.

Therefore, the total number of annual burden hours estimated to be required by the proposed regulations for purposes of registration is 6,000 hours initially (Form SDR)<sup>3</sup> and 680 hours on an ongoing basis for any additional filings.

### Reporting

Under proposed § 49.22, CCOs of registered SDRs would be required to submit an annual compliance report that contains a description of the SDR's written policies and procedures, including those related to the code of ethics, conflicts of interest, and compliance with Section 21(c) core principles. If any material error is discovered in the annual compliance report, the CCO must promptly file an amendment with the Commission to correct such material error or omission. An amendment shall contain the oath or certification required by proposed § 49.22(e)(7) that, to the best of the CCO's knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete. Based on the Commission's discussions with industry and other regulators, the Commission estimates that these reports are estimated to involve an average of 5 annual burden hours per respondent per year, for an aggregate of between 75 aggregate annual burden hours.

A CCO would also be responsible under proposed § 49.22 for, among other things, establishing procedures for the remediation of noncompliance issues, and establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues. The Commission estimates that these two requirements will require 520 hours to create and 120 hours to administer per year per respondent, for a total burden of 7800 hours initially and 1800 hours on average, annually.

Under proposed § 49.10, SDRs would be required to establish, maintain, and enforce policies and procedures for the reporting of swap data of the SDR and shall accept and promptly record all swap data in its selected asset class and other regulatory information that is required to be reported pursuant to part 45. Once such swap data is accepted, § 49.17 would require an SDR to provide direct electronic access to the Commission or its designees and, pursuant to proposed § 49.17(d), make such data available to other parties, including other regulators (i.e., Appropriate Domestic Regulators and Appropriate Foreign Regulators). In the event an Appropriate Domestic Regulator or Appropriate Foreign Regulator files an application to gain access to the swaps data maintained by an SDR, proposed § 49.17 provides that the registered SDR must notify the Commission electronically and in a format specified by the Secretary of the Commission. Under proposed § 49.16, SDRs would be required to develop written policies and procedures to protect the confidentiality of data, and, under proposed § 49.11, ensure that

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<sup>3</sup> The initial burden hours imposed will increase for SDRs located in foreign jurisdictions.

submitted data is accurate. Prior to an Appropriate Domestic Regulator or Appropriate Foreign Regulator receiving the data, proposed § 49.17 requires that a “Confidentiality and Indemnification Agreement” between the Appropriate Domestic Regulator or Appropriate Foreign Regulator and the registered SDR be executed.

Proposed § 49.15 applies to the real-time public reporting of swap data for off-facility swaps, as defined by part 43 of the Commission’s Regulations, and would require a registered SDR to notify the Commission of any swap transaction for which the real-time swap data was not received by the registered SDR within the time period required by proposed § 43.3.

Lastly, proposed §§ 49.23 and 49.24 specify the reporting requirements for a registered SDR’s emergency policies and procedures and system safeguards. Proposed § 49.23 would require registered SDRs to establish procedures for the exercise of emergency authority in the event of an emergency. A registered SDR policies and procedures shall include provisions to notify the Commission as soon as reasonably practicable of any exercise of emergency authority. When notifying the Commission of any exercise of emergency authority, a SDR shall explain the reasons for taking such emergency action, explain how conflicts of interest were minimized, and document the decision-making process. Underlying documentation shall be made available to the Commission upon request. Proposed § 49.24 provides that a registered SDR must maintain a business continuity-disaster recovery plan (“BC-DR” plan) (which can be invoked in case of an emergency). A registered SDR shall provide to the Commission, upon request, current copies of its BC-DR plan and other emergency procedures, its assessments of its operational risk and other documents requested by Commission staff for purpose of maintaining a current profile of the SDR’s automated systems. The Commission estimates that the start-up burden associated with the reporting requirements in this paragraph will be 40,000 hours per respondent for a total of 600,000 aggregate burden hours for all respondents. The Commission further estimates that the total ongoing annual burden of these systems to be 15,000 hours per respondent for a total of 225,000 aggregate burden hours for all respondents.

Proposed § 49.25 would require a registered SDR to report to the Commission (and provide sufficient documentation to substantiate the calculations made therein) the amount of financial resources available to the SDR to meet the requirements set forth in proposed § 49.25, the value of the each financial resource available, and provide a financial statement, including the balance sheet, income statement, and statement of cash flows of the registered SDR. In addition to providing documentation of the methodology used to compute its financial requirement, a registered SDR must also provide copies of any agreement establishing or amending a credit facility, insurance coverage, or other arrangement evidencing or otherwise supporting the SDR’s conclusions. The Commission estimates the financial statement will result in 200 annual burden hours per SDR for 3000 aggregate annual burden hours.

Therefore, the total number of annual burden hours estimated to be required by the proposed regulations related to reporting is 610,875 initially. Thereafter, the total number of annual burden hours estimated to be required by the proposed regulations related to SDRs’ ongoing reporting requirements is 229,875.

## Recordkeeping

Under proposed § 49.12, registered SDRs, which are estimated to be approximately 15 entities, would be required to maintain the swap transaction data it receives for a period of not less than five (5) years after the applicable swap expires, during which time the records must be readily available by the SDR and available to the Commission via real-time electronic access. Thereafter, the swap data must be archived and retrievable by the SDR within 3 business days. In addition to requiring SDRs to maintain records of swap transaction and pricing data, the proposed regulations impose an additional recordkeeping requirements on SDRs whereby they must maintain: (a) a copy of written policies and procedures, including the code of ethics and conflicts of interest policies in furtherance of compliance with the Act and Commission regulations, and (b) any records relevant to the annual compliance report. These proposed recordkeeping obligations are estimated to involve, initially, 300 burden hours, for an aggregate of 4500 annual burden hours. The Commission further estimates that the ongoing annual burden would be 254 hours per respondent for a total annual burden of 3,810 hours.

## Disclosure

Proposed § 49.26 provides that before accepting any swap data from a reporting entity or upon a reporting entity's request, a registered SDR shall furnish to the reporting entity a disclosure document. This disclosure document must contain written information which reasonably enables the reporting entity to identify and accurately evaluate the risks and costs associated with using the services of the SDR. The proposed disclosure obligation is estimated to involve a one-time initial burden of 100 hours per respondent (*i.e.*, preparation of template disclosure document). The Commission expects this requirement will result in an annual burden of one hour per respondent, for a total annual burden of 15 hours for all registered SDRs. Therefore, the total number of one-time annual burden hours estimated to be required by the proposed regulations for purposes related to disclosure is 7275 annual burden hours. Thereafter, the total annual burden hours estimated to be required by the proposed regulations for purposes related to disclosure documents is 225 annual burden hours.

See Attachment A for cost estimates associated with the burden hours calculated by this Question 12. In calculating the cost figures, the Commission based its calculations on an hourly wage rate<sup>4</sup> of \$72.75 or \$103.30 to comply with the proposed regulations. The Commission used the \$103.30 estimate in those situations where the required obligation imposed by the regulation would require an attorney or compliance attorney (see Footnote 10 for further description of methodology).

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<sup>4</sup> In arriving at a wage rate for the hourly costs imposed, Commission staff used the Management & Professional Earnings in the Securities Industry Report, published in 2010 by the Securities Industry and Financial Markets Associations (2010 Report). The wage rate used is a composite (blended) wage rate by averaging the mean annual salaries of an Assistant/Associate General Counsel, an Assistant Compliance Director, and a Programmer (Senior) as published in the 2010 report and dividing that figure by 2000 annual working hours to arrive at the hourly rate of \$72.75.

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.

The Commission believes that the additional technological infrastructure required to satisfy the SDR's responsibilities as a record keeper, reporter, and to initiate emergency procedures in the event of natural, man-made, market, or information technology procedures is estimated to cost between \$2-6 million in start up costs and \$2-4 million in ongoing operating costs.<sup>5</sup>

Therefore, the initial technological costs are estimated to be between \$60 million and \$90 million for all SDRs. The ongoing technological costs are estimated to be between \$30 million and \$60 million per annum aggregated for all SDRs.

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<sup>5</sup> These estimates were arrived at by considering the document titled "Possible Role for NFA as a Utility for Swap Transactions" which appears on the NFA website at (<http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative13sub083110-nfa.pdf>). These estimates do not include personnel costs. While the Commission believes these estimates may be higher than the actual costs, because the Commission has not regulated the swap market, it has not collected data relevant to this estimate. Therefore, the Commission requests comment on this estimate.

Additionally, please see Attachment A for the total personnel costs. Therefore, the total estimated cost per year is estimated to be between \$105,552,681.21 and \$135,552,681.25 initially<sup>6</sup> and \$47,072,332.25 and \$77,072,332.25 on an ongoing basis.<sup>7</sup>

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.

As a result of this new collection information, the increased costs to the government are estimated to include both an increase in personnel and additional technology.

The estimate of the personnel costs to the federal government per SDR is estimated to be \$970,000 annually. This estimate is based on 10 new full-time employees operating each costing an estimated \$97,000 annually.<sup>8</sup>

Additionally, the technology costs resulting from SDR registration and data aggregation (the CFTC is expected to build new technology solutions to address the aggregation and analysis of data received from multiple SDRs) are estimated to be between \$7 - \$9 million in start up costs, and an ongoing operational costs of between \$4 - \$7 million annually.<sup>9</sup>

Therefore, the total start up cost (new staff plus technology) is between \$7,970,000 and \$9,970,000 and the total ongoing cost is estimated to be between \$4,970,000 and \$7,970,000 annually.

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

These are new collections and the question, therefore, does not apply.

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

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<sup>6</sup> Total initial cost for personnel (\$45,552,681.25) plus \$60 million and \$90 million (estimated range of start-up costs), respectively.

<sup>7</sup> Total ongoing cost for personnel (17,072,332.25) plus \$30 million and \$60 million (estimated range of ongoing costs), respectively.

<sup>8</sup> In arriving at a wage rate for the hourly costs imposed, Commission staff used a composite (blended) rate of salaries for economists (Grade 11-13) and attorneys (Grade 11-14) in the Division of Market Oversight, and Technical or Subject Matter expert in IT (Grade 13) using the CFTC 2010 Washington Pay Chart (with adjusted locality pay) and divided that figure by 2000 annual working hours to arrive at the hourly rate of \$48.50. This figure does not include employee benefits.

<sup>9</sup> This estimate was obtained in consultation with the Commission's IT staff.

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.

No exceptions exist.



**Attachment A**  
**Swap Data Repositories under Section 728 of the Dodd-Frank Act**  
**Estimated Annual Hour and Cost Burden of the Collection of Information for Registration and Cost Burden**

Est'd # of Covered Entities (a)	Estimated Total Number of Hrs of Annual Burden in a Fiscal Year for all SDRs	Estimated Annual Cost per Respondent to complete Form SDR or filings associated with registration Form SDR <sup>10</sup>	Estimated Start- Up Costs per covered entity (\$) <sup>11</sup>	Estimated Operating Costs per covered entity (\$)
15	Initial: 6,000 <sup>12</sup>	Initial:	\$4-6	\$2-4

<sup>10</sup> In arriving at a wage rate for the hourly costs imposed, Commission staff used the Management & Professional Earnings in the Securities Industry Report, published in 2010 by the Securities Industry and Financial Markets Associations (2010 Report). The wage rate used was determined by 1) calculating the average hourly rate for a paralegal by taking the mean salary for a paralegal (excluding bonuses) and dividing that figure by 2000 annual working hours to arrive at a hourly rate of \$28.31, and 2) calculating a composite (blended) wage rate averaging the mean annual salaries (excluding bonuses) of a Compliance Attorney and a Deputy General Counsel, as published in the 2010 report and dividing that figure by 2000 annual working hours to arrive at the hourly rate of \$74.99. Adding these two figures, the wage rate used in this calculation is \$103.30. Because the Commission has not regulated the swap market, it has not collected data relevant to this estimate. Therefore, the Commission requests comment on this estimate.

<sup>11</sup> These estimates (i.e. “estimated start-up costs per covered entity” and “estimated operating costs per covered entity”) were arrived at by considering the document titled “Possible Role for NFA as a Utility for Swap Transactions” which appears on the NFA website at (<http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative13sub083110-nfa.pdf>). These estimates do not include personnel costs. While the Commission believes these estimates may be higher than the actual costs, because the Commission has not regulated the swap market, it has not collected data relevant to this estimate. Therefore, the Commission requests comment on this estimate.

<sup>12</sup> As described above, for those SDRs located outside the U.S., they have an additional initial obligation to file an opinion of counsel. Such opinion of counsel is estimated to require 20 hours to complete and will most likely be completed by an outside legal service estimated to cost \$400 per hour. Therefore, the total cost to complete an opinion of counsel is estimated to be \$8,000 in addition to the initial cost estimated in the table.

	Ongoing: 680	\$619,800.00 Ongoing: \$70,244.00	million	million
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Estimated Total Annual Burden Hours: 6,000 initial annual burden hours; 680 ongoing annual burden hours

**Estimated Annual Hour and Cost Burden of the Collection of Information for Reporting**

Est'd # of Covered Entities	Est'd Total Annual Burden Hours per respondent	Est'd Total Annual Burden Hrs. per fiscal year	Estimated Annual Cost per Respondent For Hr. Burden (\$) <sup>13</sup>
15	Initially: 40725 Ongoing: 15325	Initially: 610,875 Ongoing: 229,875	Initially: \$44,441,156.25 Ongoing: \$16,723,406.25

Estimated Total Annual Burden Hours:      610,875 initial annual burden hours; 229,875 ongoing annual burden hours

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<sup>13</sup> This estimate is based on the estimated total number of hours of annual burden in a fiscal year multiplied by the average hourly rate of personnel as calculated in footnote 3 (\$72.75). Because the Commission has not regulated the swap market, it has not collected data relevant to this estimate. Therefore, the Commission requests comment on this estimate.

**Estimated Annual Hour of the Collection of Information for Recordkeeping**

Est'd # of Covered Entities	Est'd Total Annual Burden Hrs. per respondent	Estimated Total Number of Hrs of Annual Burden in a Fiscal Year	Estimated Annual Cost per Respondent For Hr. Burden (\$) <sup>14</sup>
15	Initially: 300 Ongoing: 254	Initially: 4,500 Ongoing: 3,810	Initially: \$327,375.00 Ongoing: \$277, 177.50

Estimated Total Annual Burden Hours: 4,500 initial annual burden hours; 3,810 ongoing annual burden hours

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<sup>14</sup> This estimate is based on the estimated total number of hours of annual burden in a fiscal year multiplied by the average hourly rate of personnel as calculated in footnote 3 (\$72.75). Because the Commission has not regulated the swap market, it has not collected data relevant to this estimate. Therefore, the Commission requests comment on this estimate.

**Estimated Annual Hour of the Collection of Information for Disclosure**

Est'd # of Covered Entities	Est'd Total Annual Burden Hrs. per response	Estimated Total Number of Hrs of Annual Burden in a Fiscal Year	Estimated Annual Cost per Respondent For Hr. Burden (\$) <sup>15</sup>
15	Initially: 100 Ongoing: 1	Initially: 1,500 Ongoing: 15	Initially: \$164,350 Ongoing: \$1,504.50

Estimated Total Annual Burden Hours: 1,500 initial annual burden hours; 15 ongoing annual burden hours

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<sup>15</sup> This estimate is based on the estimated total number of hours of annual burden in a fiscal year multiplied by the average hourly rate of personnel as calculated in footnote 7 (\$103.30). Because the Commission has not regulated the swap market, it has not collected data relevant to this estimate. Therefore, the Commission requests comment on this estimate. Additionally, external legal costs and external compliance consulting costs are added to the initial cost calculation as it is expected that outside services will be employed to prepare the disclosure documents. The Commission estimates that \$4,400 of external legal costs and \$5,000 of external compliance costs will be expended initially by the SDR.