

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

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.¹ Title VII of the Dodd-Frank Act amends the Commodity Exchange Act (“CEA”)² to establish a comprehensive new regulatory framework for swaps and security-based swaps. Section 726 of the Dodd-Frank Act requires the Commodity Futures Trading Commission (CFTC) to establish certain standards for governance of (i) derivatives clearing organizations (“DCOs”), (ii) designated contract markets (“DCMs”), and (iii) swap execution facilities (“SEFs”). The CFTC must promulgate rules that mitigate certain conflicts of interest in the operation of these entities and so proposes new rules in Parts 37, 38, 39, and 40 of the Commission’s regulations. This supporting statement concerns new collections of information required by these new rules. The following new rules would require collections of information:

- Regulation 37.1200(b)(5) and Regulation 38.851(b)(5), which require each SEF and DCM, respectively, to provide to the CFTC on an annual basis a report assessing the SEF’s or DCM’s regulatory program including expenses, staffing and structure, and certain disciplinary matters.
- Regulation 37.1200(d) and Regulation 38.851(d), which require a SEF and DCM, respectively, to submit a report to the CFTC detailing five items of information in the event that the SEF’s or DCM’s Board of Directors rejects a recommendation or supersedes an action of the Regulatory Oversight Committee or the Membership or Participation Committee (or entity performing the functions of such committee) and Regulation 39.25(b), which requires a DCO to submit a report to the CFTC detailing five items of information in the event that the DCO’s Board of Directors does not adopt a recommendation of the Risk Management Committee or the latter does not adopt a recommendation of its subcommittee.
- Regulation 38.801(d) and Regulation 39.24(b)(4), which require each DCM and DCO, respectively, to provide to the CFTC information on an annual basis that supports compliance with certain governance fitness standards.

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

² 7 U.S.C. 1 *et seq.*

- Regulation 38.901(c) and 39.24(a), which require, respectively, each DCM and DCO to make available to the public and the CFTC a description of its process to enable its Board of Directors to obtain a fair understanding of the range of opinions that market participants hold with respect to proposed rules (and for DCOs, owners too).

- Regulation 38.1151(d), which requires each DCM that is publicly listed on a domestic exchange to certify to the CFTC whether and how its Board of Directors has met certain diversity standards.

- Regulation 40.9(b), which requires each DCO, DCM, or SEF to submit to the Commission, within thirty days after each governing board election, a list of the board's members, the membership interests they represent, if any, and a demonstration of how the board's composition is consistent with other regulations governing board composition and the DCOs, DCMs, or SEFs own implementing standards and procedures.

- Regulation 40.9(d), which requires each DCO, DCM or SEF to make certain information concerning the Board of Directors, significant decisions, decisions concerning open access, and information concerning governance arrangements available to the public and the CFTC on an ongoing basis.

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 CFTC to assess the governance arrangements and operations and regulatory programs of DCMs and SEFs, the manner in which decision-making takes place, how conflicts of interests are mitigated or managed, and how the views of market participants are taken into account. All five information collections are new.

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 email and the internet. All required submissions may be submitted electronically. Other information may be posted on the internet on the respondent's website.

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.

None of the information collections are specifically duplicative. Each different type of information is needed given the purposes for which the data will be used. The required information is not available from any other source.

5. If the collection of information involves small business or other small entities (Item 5 of OMB From 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 rules on such entities in accordance with the RFA. The Commission determined that DCMs and DCOs are not small entities for the purpose of the RFA. SEFs are a new category of registrant. In the Federal Register release proposing the rules containing the collection of information requirements, the Commission proposes not to define SEFs as 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 the proposed rules, the Commission would not be able to adequately assess the governance arrangements and operations and regulatory programs of DCMs and SEFs. With regard to collections of information based on the occurrence of certain events (i.e., the rejection of a recommendation of a DCM’s Regulatory Oversight Committee), the required submissions are no more frequent than is necessary to provide the Commission with timely information for it to adequately assess certain aspects of registered entities’ governance arrangements.

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;

See response to Question 6, above.

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

This question does not apply.

- 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 must maintain certain records in order to possess documents needed to demonstrate compliance with the proposed rules. For enforcement purposes, Commission Regulation 1.31 requires that all books and records required to be kept by the Commodity Exchange Act or by the regulations be kept for a period of five years from the date thereof and shall be readily accessible during the first two years of the five year period. All such books and records are 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;

The proposed rules do not involve statistical surveys.

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

The proposed rules 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

The proposed rules do not involve pledges of confidentiality.

- 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 rules do not involve submission of proprietary trade secrets or other such information to the Commission.

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.

A copy of the proposed rules has been submitted to the Federal Register for publication and public comment.

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 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

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.

No such circumstances are anticipated to occur.

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 has provided no assurance of confidentiality above that provided by the agency's Freedom of Information Act regulations, 17 C.F.R. Part 145. Outside of the Freedom of Information Act, there is no basis for confidential treatment of any of the information governed by these rules.

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.

See Attachment A. The cost to the public of the hour burdens varies between \$25 to \$500 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.

See Attachment A.

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 primary costs for reviewing and analyzing documents under the new information collections are the salaries and benefits of existing legal staff. It is estimated that it will take 6 staff attorneys approximately one-quarter of their total time to review the material that is the subject of the information collections discussed herein. The annual salary of a staff attorney averaged out over the different levels of staff attorneys conducting the reviews is approximately \$100,000. So the estimated annualized cost to the Federal Government is \$150,000. The proposed rules should not add to existing costs.

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 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

Regulation OMB Collection #3038-XXXX	Estimated # of Respondents Per Year	Reports Annually By Each Respondent	Total Annual Responses	Estimated Average Number of Hours Per Response	Estimated Total Number of Hours of Annual Burden
Regulation 37.1200(b)(5) and Regulation 38.851(b)(5) regarding regulatory program	51	1	51	20	1020
Regulation 37.1200(d), 38.851(d) and 39.25(b) regarding rejection of Committee recommendation	70	1	70	15	1050
Regulation 38.801(d) and Regulation 39.24(b)(4) regarding fitness standards	35	1	35	8	280
Regulation 38.901(c) and 39.24(a) regarding market participants' opinions and	35	1	35	15	525
Regulation 38.1151(d) regarding diversity	16	1	16	15	240
Regulation 40.9(b) re board elections	70	1	70	2	140
Regulation	70	4	280	10	2800

40.9(d) re governance arrangements					
Total recordkeeping requirements					6055